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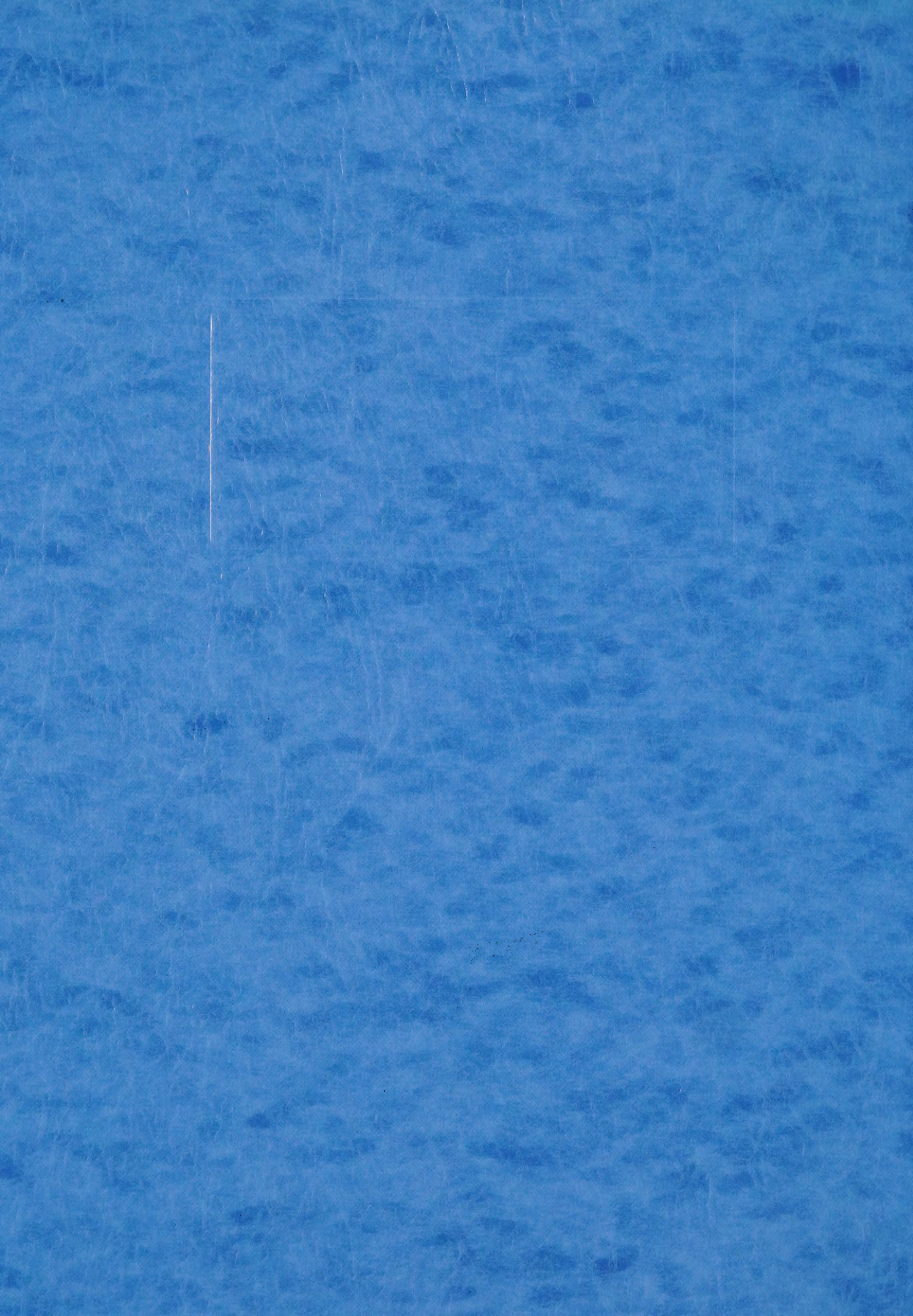
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SUBMISSION TO THE NATIONAL  
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## NATIONAL TRANSPORTATION AGENCY OF CANADA

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### SUBMISSION TO THE NATIONAL TRANSPORTATION ACT REVIEW COMMISSION

JUNE, 1992



Canada



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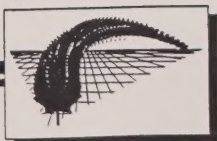
NATIONAL TRANSPORTATION AGENCY OF CANADA

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SUBMISSION TO THE NATIONAL TRANSPORTATION ACT  
REVIEW COMMISSION

JUNE, 1992



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Canada

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## EXECUTIVE SUMMARY

Section 266 of the National Transportation Act 1987 (NTA, 1987) requires that the 1992 comprehensive review consider the extent to which the policy objectives of the 1987 Act have been met.

Provisions in the Act for realizing many of those policy objectives, especially in rail, marine and air modes and in the development of accessible transportation for persons with disabilities, are within the jurisdiction of the National Transportation Agency of Canada (the Agency). The Agency was formed by the NTA, 1987 and has now had over four years of experience in administering the legislation. In addition, the Agency has collected a wealth of informed comment and opinion through the completion of four Annual Reviews of the operation of the NTA, 1987.

This submission reviews information available to the Agency, including information prepared earlier by staff of the Agency and publicly released to the Review Commission. It is intended to assist the Review Commission in assessing whether, under the Act, the transportation system serves the needs of shippers and travellers, contributes to the economic well-being of the country and its regions, and is economic, competitive, effective, and viable with a minimum of government intervention.

The submission does not comment on the trucking sector, as the Agency has no direct role in the administration of the trucking provisions of the NTA, 1987. The Agency's fourth Annual Review does, as in other years, contain an extensive trucking section.

### RAIL

Large volumes of traffic important to domestic and export markets move by rail, especially resource-based traffic important to isolated locations and the regions. The NTA, 1987 has been effective in creating an environment in which "competition and market forces are the prime agents" in providing transportation services. A more competitive market for railway services has developed. As a result, shippers have been able to negotiate more favourable rate and service agreements with the railways. Shippers have also reported significant service improvements in the rail sector.

The package of competitive access provisions has been useful for large and small shippers in all regions. These provisions exposed the railways to market forces and improved the competitive position of shippers, especially those captive to rail service or only one railway. Most traffic now moves under confidential contract with



the competitive access mechanisms serving as key negotiating tools in obtaining improved service and rates.

Although the railways opposed the competitive access provisions, a strong parallel to competitive access is found in the telecommunications sector. Unitel, which is 60% owned by CP, has requested a CLR-like rate from the CRTC. The application stems from Unitel's proposal to offer competing long-distance telephone services to local customers of Bell Canada and other telephone companies. This rate would provide Unitel with access to a customer on a competing carriers' local line at a rate to be set by the regulator.

Overall, operating revenues have exceeded expenses on Canadian rail operations since the NTA, 1987 came into force. Investments have increased, although the recession and labour adjustment costs have cut earnings in recent years. In response to the new competitive environment, CN and CP have each formed marketing and operating organizations covering all their North American operations, entered into marketing alliances with U.S. railways, adopted new intermodal approaches and speeded up network rationalization. The Agency has no evidence that CLR's and other reforms have impaired financial viability or constrained investment in acquisitions or capital projects.

Agency analysis of Canadian and U.S. tax regimes suggests that when all taxes are considered, railway tax liability under Canadian and U. S regimes are similar. Hence, Canadian carriers are not disadvantaged by the tax regime.

Recently, the Federal Court of Appeal, in rejecting an appeal against an Agency order, re-affirmed the principles of the new legislation, stating:

" The appellant is confusing the purpose of the new National Transportation Act with that of the previous legislative regime. The new Act is not concerned only with the rights of railways, but rather with creating new balance between the rights of shippers and those of the railways. Its goal is an efficient, competitive reasonably priced transportation system, not the preservation of the railway industry's historic way of doing business."

The Agency, based on the evidence available to it, concludes that the mechanisms in the NTA, 1987 have successfully achieved those policy goals.

## MARINE

Section 266 of the NTA, 1987 requires a review of the operation of the Shipping Conferences Exemption Act, 1987 (SCEA), an Act administered by the Agency.

SCEA provisions govern the conditions under which conferences of ocean shipping lines and their collective activities are regulated in Canada. The Act exempts certain practices (e.g. collective rate-setting and conditions of service) from provisions of the Competition Act. To encourage competition, SCEA contains new provisions for confidential service contracts, the right of conference members to take independent rate action and new complaint procedures.

There has been limited use of these new provisions. Competition in the liner shipping industry has been strong, however, at least partly because of competition from non-conference shipping lines. Rates remain depressed due to overcapacity in the ocean shipping industry.

Liner services must be viewed in a global context. To assure the competitiveness of Canadian shippers in world and North American markets, they must have access to liner services at affordable costs. This encourages Canadian liner shipping policy to be consistent with that of Canada's major trading partners and encourages liner services to work closely with other modes in developing competitive routings and services.

## AIR

The NTA, 1987 was designed to reduce regulation and encourage reliance on market forces to improve service to travellers and shippers. The NTA, 1987 removed most economic regulation of air transportation in southern Canada and changed the regulations in northern and remote regions of Canada.

Since air regulatory reform began, service has improved markedly to meet demands for traveller convenience. Also, increased competition, resulting in more widespread use of discount fares, has curbed increases in air fares. Average fares, in constant terms, have not increased much since 1987. Airline revenues per passenger kilometre (yield) have, in constant terms, been stable since 1988.

Overcapacity is a problem for major Canadian air carriers. When combined with recession conditions exacerbated by fuel price increases and travel cut-backs associated with the Persian Gulf war, this over-capacity has put carriers under financial pressure. This has led to re-structuring of operations and recent service cut-backs.



The industry has restructured, with extensive changes in services, equipment and marketing. Air services are dominated by two large carriers -- Air Canada and Canadi\*n -- who now provide extensive route networks using affiliated regional carriers.

In the early 1980's the air industry had prescribed roles for carriers. Smaller companies served as collectors and distributors for regional and national carriers. Since the mid-1980's this has been replaced by two networks linked to the larger carriers. These networks have grown through purchases of independent carriers, mergers and alliances and acquisition of low-volume routes. This allowed airlines to link national, regional and local flights and has produced two competitive networks.

Regional carriers have increased frequencies to smaller centres, offering greater choice and convenience for connecting with major carriers. Faced with direct competition, the regional carriers have increased revenues, service quality, and capacity, as have major carriers.

#### ACCESSIBLE TRANSPORTATION SERVICES FOR DISABLED PERSONS

The NTA, 1987 requires carriers to provide service in a manner that does not constitute an undue obstacle to the mobility of persons, including persons with disabilities. The Act also gives the National Transportation Agency the authority to make orders and regulations to eliminate undue obstacles in the transportation network governed by the Act.

In the area of regulation development, the Agency is currently working on a number of initiatives that deal with terms and conditions of carriage of persons with disabilities, training standards for transportation personnel, communication of information and accessibility of equipment and terminal facilities. Proposed regulations concerning training of personnel and terms and conditions for carriers operating large aircraft were published in the Canada Gazette in March 1992 for public comment.

With respect to complaint resolution, the Agency has dealt with over 50 formal applications, most of which relate to the air mode and to persons with mobility impairments. In 12 of these cases, the Agency identified an undue obstacle. The Agency has conducted or is in the process of conducting a number of inquiries into the level of accessibility of motor coach, air and ferry services as well as of ground services at airports.

The Agency has been active in informing persons with disabilities of their rights under the Act, and consults with industry and groups representing persons with disabilities to obtain information on the effectiveness of accessible transportation initiatives.

The Agency supports the proposal to amend Section 3 of the NTA, 1987, the national transportation policy, to provide specifically for the needs of travellers with disabilities.

#### ADMINISTRATION OF THE LAW

The experience of the Agency, supported by the evidence presented, is that the provisions of the NTA, 1987 have been successful in achieving the policy goals set by Parliament. The Agency has benefitted from the information obtained from the Annual Reviews which permit a thorough understanding of the industry. It is therefore recommended that the current provision for annual reviews be extended indefinitely. Other amendments, to the Act, mostly of an administrative nature, are also suggested to improve provisions for carrying out the current policy.



## INTRODUCTION

The National Transportation Act, 1987 (NTA, 1987) introduced a new regulatory balance between shippers and carriers. The vital need for Canadian producers to have low-cost, efficient transportation was recognized in the legislation. Competition and market forces became the prime agents for a viable and effective transportation service. Protective measures for carriers were minimized. Rather, domestic transportation policy focused on enhancing the ability of Canadian businesses to compete successfully at home or in world markets.

Section 266 of the NTA, 1987 requires that the 1992 comprehensive review consider the extent to which policy objectives of the NTA, 1987 have been met. Provisions in the Act for realizing many of those policy objectives, especially in rail, marine, air modes and in the development of accessible transportation for the disabled, are within the jurisdiction of the National Transportation Agency of Canada (the Agency). The Agency was formed by the NTA, 1987 and has now had over four years of experience in administering the legislation. In addition, the Agency has collected a wealth of informed comment and opinion through the completion of four Annual Reviews of the operation of the NTA, 1987.

This submission reviews information available to the Agency, including information earlier prepared by staff of the Agency. It is intended to assist the Review Commission in its assessment of whether the transportation system serves the needs of shippers and travellers, contributes to the economic well-being of the country and its regions, and is economic, efficient, competitive and viable with a minimum of government intervention.

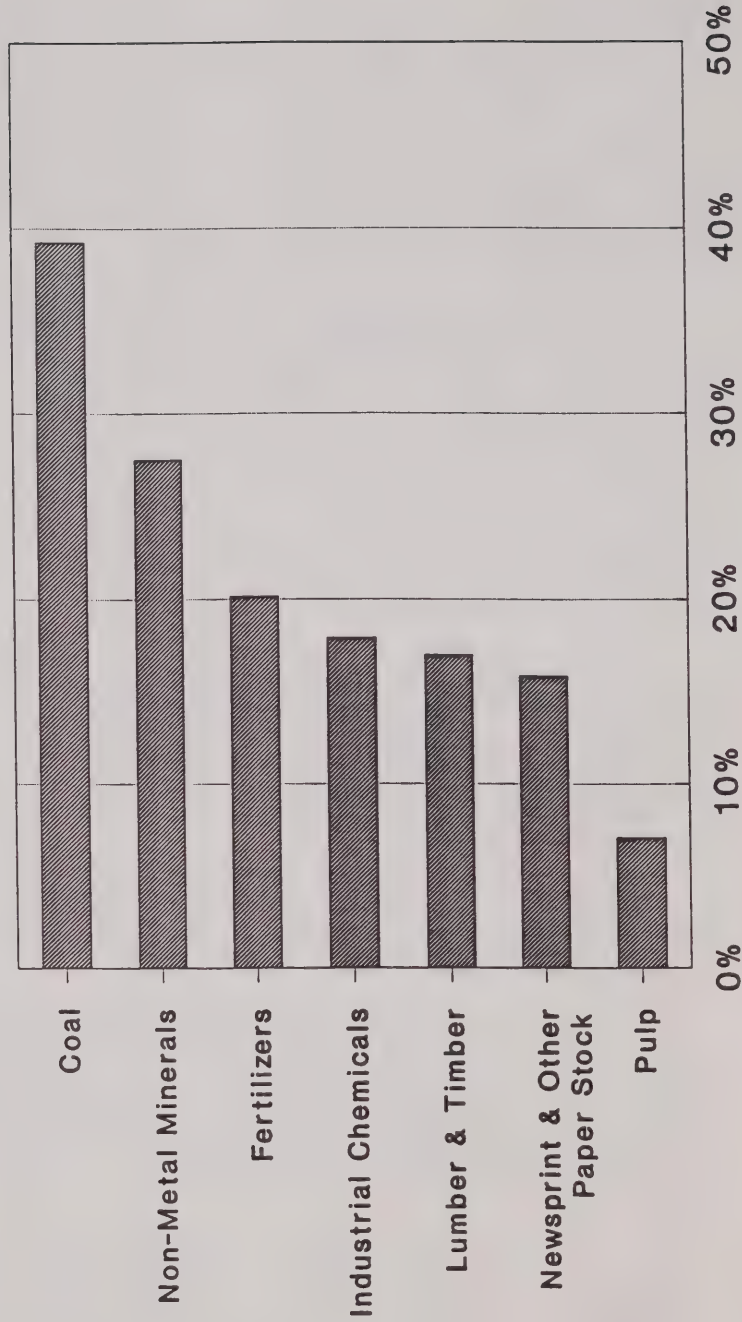
The submission does not comment on the trucking sector, as the Agency has no direct role in the administration of the trucking provisions of the NTA, 1987. The Agency's fourth Annual Review does, as in other years, contain an extensive trucking section.

Transportation costs, as a percentage of total costs, tend to be higher for Canadian shippers than for their competitors in other countries. In the case of resource products, rail charges generally represent around 20% of the delivered price and at the extreme can amount to almost 40% for coal, as shown in Figure 1. Transportation is the difference, in many cases, between shippers being competitive or non-competitive in reaching their markets.

Canadian producers and shippers operate in an environment that is shaped by competition. These corporations are exposed to competition supported by factors such as lower production costs, lower wages, different tax environments, higher productivity levels and lower equipment costs that exist in other countries. Carriers have only recently been asked to compete on this same basis.

Figure 1

# Transportation Costs for 7 Major Commodities as a Proportion of Price, 1986



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Transport Canada, based on Statistics Canada I/O models



The NTA, 1987 expanded the scope of competition, from intermodal competition to include intramodal competition. Previous legislation covering individual modes had, in fact, constrained competition and protected carriers from intramodal competition at the expense of shippers and consumers by permitting collective rate-making. Under the NTA, 1987 policy directions changed: both inter and intramodal competition were encouraged as the best way to meet the needs of shippers and, therefore, the economy as a whole.

## RAIL

In rail, the NTA, 1987 introduced a comprehensive package of inter-related measures designed to meet the objectives described above. The rail provisions of the NTA, 1987 were designed to combat a lack of sufficient transportation competition in certain markets. Of particular importance was the need for greater intramodal competition between Canadian railways. More specifically, the legislation focused on the plight of captive shippers. These shippers were dependent on the services of railways for transportation routings and prices. They were seen as having little negotiating power in rate negotiations within a railway-controlled transportation environment.

Competitive rail transportation services are essential to survival of Canadian shippers

The NTA, 1987 provided a range of new competitive measures for rail shippers

Intramodal and intermodal competition was encouraged

With the passage of the NTA, 1987, more transportation choices and competitive rates became key policy objectives. Competitive access provisions allowed for induced competition where previously none existed. New interswitching measures generated more shipper options. Dispute resolution services were offered to replace ineffective legislative provisions that, in many cases, limited shippers to railway dictated service and rate packages.

Railways were given greater freedom to manage. Confidential contracts essentially removed regulatory intervention from pricing and service decisions. As well, more expeditious rail line abandonment provisions recognized a pressing need to shed high levels of overcapacity. It was clear that the railways would have to compress costs to be competitive and this was addressed in the legislation.

The objectives of the NTA, 1987, with respect to rail, have been re-affirmed by the Federal Court of Appeal in rejecting the appeal against an Agency order. The Court, in its decision, made the

following statements which serve to clarify national transportation policy as it applies to rail.

" This new legislation is aimed at changing the old ways by fostering more competition within the railway industry and within the transportation system generally."

" ... Under the new scheme market forces are the primary influence in the establishment of rates whereas under the old system rates were tightly regulated and sometimes even established by the railways themselves. The aim of all of this is to foster competition so as to render the railway system more efficient by providing transportation at the lowest possible cost, consistent with the other policy goals of the Act."

" The appellant is confusing the purpose of the new National Transportation Act with that of the previous legislative regime. The new Act is not concerned only with the rights of railways, but rather with creating new balance between the rights of shippers and those of the railways. Its goal is an efficient, competitive, reasonably priced transportation system, not the preservation of the railway industry's historic way of doing business."

The following sections address the extent to which the rail provisions of the NTA, 1987 have fulfilled the fundamental policy objectives. This will be accomplished through examination from three perspectives.

- The extent to which competitive access to railway transportation has been achieved by shippers.
- The impact of the NTA, 1987 on the financial performance of the railways.
- The extent to which railway service and operations have changed to meet the needs of shippers.

#### COMPETITIVE ACCESS

This section reviews how the rail competitive access provisions of the NTA, 1987 have increased intramodal competition, met shipper needs and provided railways and shippers more freedom to negotiate competitive rate and service agreements.

Captive shippers are found in every region of Canada: resource industries in the west and remote regions; urban industries in the



large metropolitan centres; and industries located east of Saint John, New Brunswick, where only the lines of CN continue on to Nova Scotia. However, some groups of captive shippers are more crucially dependent on rail transportation than others, and so are more affected by their captivity and provisions for competitive access.

Most captive shippers produce relatively low-value, high-volume bulk products which must move a long distance to market. This group, known as resource-based shippers, are most often found in the remote areas of Canada -- particularly in the west and northern regions -- far from ports and the foreign markets they serve. These industries are captive to rail because of the weight, quantity and nature of the product shipped and are generally captive to one railway.

Some shippers located in urban centres are captive because of the physical characteristics of their products. Products such as hazardous chemicals often move by rail for public safety. Large products must also move by rail because weight restrictions may limit highway use or it may be uneconomical to ship by any other means.

Many of Atlantic Canada's shippers are also captive, since CP's Canadian rail services extend only as far east as Saint John, New Brunswick. Shippers located in Nova Scotia and the northern and eastern parts of New Brunswick wishing to move products in or out of those regions by rail are captive to the lines of CN. The greatest part of bulk commodities produced in Atlantic Canada such as coal, potash and gypsum have no rail alternative to CN. Gypsum accounted for 47% of Atlantic exports, while potash and coal accounted for 15% and 9% respectively.

### Competitive Line Rates

A Competitive Line Rate (CLR) is a rate which is set for a shipper who is captive at origin or destination to the line of a single railway and who is located far from an interchange with a second railway's lines. CLRs are specially designed to meet the needs of shippers who are both captive and remote from distant markets.

CLR's proved to be the most controversial measure introduced in the NTA, 1987. They were designed to provide competition where none previously existed.

CLR's have improved access to competitive transportation services.

Shippers use CLR's as a bargaining tool in rate and service negotiations.

Railways continue to oppose CLR's.

Large volume shippers producing resource products have been given greater transportation options, in many cases, for the first time.

The railways were opposed to competitive line rates when they were introduced.

Competitive line rates were overwhelmingly endorsed by shippers, shipper associations and the Governments of Alberta, Saskatchewan and Manitoba (the only provincial governments taking a position on the issue). During the legislative deliberations, the "Coalition of Concerned Shippers" strongly endorsed the inclusion of the competitive line rate measures in the NTA, 1987. This coalition represented 14 national shipper organizations, with a combined total annual freight bill in excess of \$15 billion and trade totalling \$150 billion.

Parliament -- while cognizant of the dire predictions for rail viability -- decided in favour of a policy which encouraged Canadian business to compete more effectively. The NTA, 1987 allowed shippers, located beyond the new 30 kilometre interswitching limit, to access the lines of other railways for greater distances.

Railway productivity has increased as historically high surplus plant and equipment levels have been compressed in response to greater competitive requirements. Revenues dropped in 1989 (due mainly to low grain shipments) but have since resumed an upward progression. On balance, shippers' service levels have improved and rate increases have been below inflation. The railways' dire predictions about railway viability, profit adequacy and declining service have clearly not yet materialized. Financial performance has been mostly a function of the recession, depressed grain traffic, a high Canadian dollar and write-downs to shed overcapacity -- rather than regulatory influences.

The fundamental purpose of the competitive line rate provision is often obscured by the controversy that has surrounded this issue. Shippers can only reap the benefit of competition if they have access to more than one carrier. The NTA, 1987 merely asks the railways to compete for traffic on their lines. Should a railway decide to compete -- meet the offer of a challenging railway -- no traffic is lost. Competitive line rates were introduced to establish intramodal rail competition where none existed before. The shippers were seen as having the right to competitive service options.

The concept of competitive access is not new. Interswitching -- an established railway practice for close to 90 years -- is based on the same fundamental premise as competitive line rates. Namely, one railway gains access to traffic from another railway by virtue of regulatory provisions. In essence, a competitive line rate



functions as an extension of interswitching rates, calculated differently as a result of the greater distances involved.

It was said that CLRs would open up Canadian traffic to U.S. carriers but this was neither the intent nor the effect. The CLR provisions merely opened up captive Canadian shipper traffic to competition with competing carriers where none previously existed.

Under the NTA, 1987, interswitching rates were prescribed for traffic interchanged within 30 kilometres of origin or destination. Resource producers operating in Canada's hinterlands (beyond 30 kilometre interchanges) would, however, be excluded from competitive rail service if only interswitching measures were available. The growth of Canada's resource industries - often in outlying regions - was an important factor leading to CLR's. Competitive line rates were introduced by Parliament to harmonize railway competitive access with today's industrial framework and the future needs of Canadian business.

Since the NTA, 1987 came into effect, any shipper who is captive to one railway, and beyond interswitching limits, can ask the local railway to establish a competitive line rate to move goods between the point of origin or destination of the traffic and the nearest interchange with a connecting railway. The shipper must already have reached an agreement on rates and other conditions with the connecting railway. If the shipper and the local railway cannot agree on the competitive line rate, the shipper can ask the Agency to determine a rate according to legislated guidelines.

In the first four years under the new legislation, the Agency has set five CLRs of which three were renewals. One was an application from CSP Foods Limited in 1989 for the movement of canola oil. The other, made initially in 1988 and repeated each year since, was made by Alberta Gas Chemicals Limited for the movement of methanol. In both applications the connecting carrier was a United States railway. Neither CN nor CP Rail has been involved as a connecting railway in any competitive line rate applications to the Agency.

For the majority of shippers, the greatest value of the competitive line rate provisions are their use as a bargaining tool. The following opinion was expressed in response to the shippers survey by a large shipper in the lumber industry: "Competitive line rates provide a backdrop for negotiations and as such are critical to maintaining balance between shippers and carriers". A number of other shippers made similar comments. A medium-sized public utility commented: "...allows the shipper to negotiate with a competitive edge", while a small Ontario electronics manufacturer phrased it this way: "...they were available should an impasse occur with our negotiations".

Looking back over the four-year period from 1988 to 1991, the Agency finds that CLR's have met policy objectives by improving access to

competitive transportation services, and rates. There is no evidence available to the Agency which would indicate that this provision has, in any way, impaired the railway's financial performance.

#### CLR's - A Cross Industry Comparison

A strong parallel for competitive access is found in the telecommunications sector. Unitel, a telecommunications company, which is 60% owned by CP, applied to the Canadian Radio-television and Telecommunications Commission (the CRTC) in May, 1990 for permission to use the network of other telephone companies to compete with the equipment owners for the long distance telephone market. The application strongly supported the need for interconnection.

There is a strong parallel between Unitel's application to the CRTC and CLR's.

This comparison has been used for illustrative purposes because there are similarities between Unitel's application for interconnection and certain rail competitive access provisions in the NTA, 1987. No attempt is made to comment on the merits of Unitel's application before the CRTC.

Unitel's application seeks competitive access to a market where only one service provider now exists. The cornerstone of Unitel's application is that the other telephone companies are presently operating as monopolies in their respective territories. Unitel, using local exchange facilities of these companies, proposes to provide the Canadian public with long distance telephone service in competition with the other companies. Unitel's position is that competition between it and the other companies will result in lower prices, greater innovation and more responsive service for telecommunications users. Unitel states that competition will improve productivity and encourage the industry to become more efficient.

The sharing of long distance telephone facilities, as proposed in the Unitel application, is very similar to the sharing of railway infrastructure through the competitive line rate (CLR) provisions of the NTA, 1987. The purpose of setting a CLR is essentially to provide a competitive rate and/or better service to the customer, the shipper. Because an industry is physically served by only a single railway at origin, it may be subject to the monopoly power of that railway in its rate and service negotiations. Like the Unitel application, the establishment of a CLR allows the shipper to access a competing provider of that service. In essence, the competing railway, like Unitel, can then also serve the captive shipper's markets by receiving the originated traffic from the line



of the railway physically serving the shipper at the nearest rail connection between the two railways.

## Interswitching

The NTA, 1987 provides competitive access to shippers mainly in urban areas through regulated interswitching. Every year, the Agency sets interswitching rates above compensatory levels for particular switching zones. The rates charged prior to 1988 had been in place since 1951 and were wholly non-compensatory.

The interswitching provisions allow a shipper on one railway the opportunity to have traffic interchanged to a competing railway within a radius of 30 kilometres of the origin of movement (or a greater distance at the discretion of the Agency). These provisions also apply to terminating traffic.

Before the NTA, 1987, interswitching measures only applied to/from a point within 6.4 kilometres of an interchange. Based on Agency survey results, 50% of shippers are now located within the interswitching limits.

Figure 2 shows that from 1988 to 1990, CN and CP Rail together interswitched, on average, over 136,000 cars each year. Over half the current interswitching activities take place within the 6.4 kilometre zone that existed prior to 1988. The NTA, 1987, therefore, extended competitive access to some 60,000 more cars per year.

Railway revenues resulting from interswitching have increased considerably. The old interswitching rate for the 6.4 kilometre limit was around \$30 per car. In 1988, a compensatory rate of \$165, for Zone 1 interswitching (0 - 6.4 kilometres), was struck. The rate for 1992 is now \$195 per car.

CP Rail interswitching revenues for Zone 1 increased by \$15.3 million from 1988 to 1990 as a result of the new NTA, 1987 rates. By comparison, CN revenues reflect a \$17.1 million increase. Thus, CN and CP Rail's combined revenues from interswitching increased by approximately \$10 million to \$12 million annually.

The NTA, 1987 extended access to interswitching to over 60,000 cars - 50% of rail shippers have access to interswitching.

Railway interswitching revenues have increased considerably since 1988.

Competition for traffic has lowered rates and improved service.

## Rail Cars Interswitched CN/CP Combined, 1988 to 1990

Year	Zone 1	Zone 2	Zone 3	Zone 4	TOTAL
1988	87,884	15,685	17,503	10,910	131,982
1989	76,268	19,137	33,131	15,403	143,939
1990	66,095	14,175	37,259	16,243	133,772



Response by shippers to Agency surveys confirm the important role of the interswitching provisions in their operations. The Agency's findings may be summarized as follows:

- Many shippers reported that they used the possibility of interswitching as a bargaining tool in their negotiations with Canadian railways in 1991.
- Significant rate concessions were reported by shippers who used the interswitching provisions in their negotiations.
- Shippers indicate that there has been an increase in competition between CN and CP Rail as a result of the new interswitching provisions and that they have had a positive impact on their firm's performance .

Typical of the favourable reception given these provisions by industry is the following comment from a small manufacturer: "[Interswitching] has dramatically improved transportation and competitiveness."

Both CN and CP Rail, in their submissions to the Agency on the operation of the NTA, 1987, expressed reservations about certain aspects of interswitching. Recently, however, interswitching received a vote of support from CP Rail. CP has urged the U.S. to adopt interswitching regulations similar to Canada's. Commenting on the refusal of Conrail to allow the Delaware and Hudson Railway (D & H) switching rights at regulated rates in Philadelphia, which limited competitive access, CP Rail stated:

"Compensation under the interswitching rule seems to provide an accepted and workable solution to the problem of how to balance competition among railroads while meeting the needs of customers."

Once again, the information available leads the Agency to conclude that the interswitching provision has met the policy objective of improving competitive access for shippers.

### **Confidential Contracts**

Confidential contracting has become a mainstay of railway marketing. This provision of the NTA, 1987 has been favourably received by carriers and shippers in all regions of the country. By the end of the first year of implementation, confidential contracts covered almost half of rail shippers surveyed. By 1991, this proportion had risen to almost two-thirds. Not only did an

# Confidential Rail Contracts and Amendments Filed with the Agency

Year	Contracts	Percentage Change %	Amendments	Percentage Change %
1988	1,223	-	415	-
1989	2,525	106.5	1,286	209.9
1990	3,900	54.5	4,989	287.9
1991	5,086	30.4	8,278	65.9



increasing proportion of respondents indicate that they had contracts, they also indicated that they moved an increasingly larger share of their traffic under contract. This share has stabilized at around 70% in recent years.

As shown in Figure 3, the annual number of confidential contracts filed in Canada has grown exponentially since 1988. Over 5000 new confidential contracts were filed in 1991, an increase of 30% over 1990. CP Rail continues to increase its share of new contract filings, from slightly over 50% in 1988 to 65% in 1991. With CN's share remaining about 30% for all four years, the other carriers' percentage has fallen from 19% in 1988 to only 6% in 1991. Four commodities account for over 60% of all contracts: chemicals, pulp and paper, lumber and food. These have been the same top four commodities in each year since 1988.

Confidential contracts are widely used; over two thirds of shippers used them in 1991.

Shippers report confidential contracts have a positive impact on securing competitive terms and conditions and lower rates.

Shippers have reported rate increases under the new legislation that have been under the general rate of inflation. In fact, in year one of the reform, 1988, when the railways were busily signing up many shippers under confidential contracts, the unweighted average rate change from 1987 was a decrease. Since then, the average year to year change has been an increase of between 1.0% and 1.3%.

In each of the four years since 1988 shippers have been asked to indicate their reaction if a Canadian railway implemented a general commodity rate increase. Respondents have consistently chosen "successfully negotiated a reduction in the increase" and "absorbed the increase" as either first or second most popular response.

Confidential contracting has provided benefits to both railways and shippers. They have allowed railways to "lock-up" traffic from shippers. In return for secure traffic the railways have offered competitive rates and/or better service. Benefits have not been limited to large shippers. Shippers of all sizes have indicated the importance of confidential contracts in achieving competitive terms of service and lower rates

Typical of the comments received by the Agency on this matter is the following from a mid-sized Quebec shipper in the food products industry: "[Confidential contracts are the] most important aspect of transport today".

## Dispute Resolution

The NTA, 1987 offers a number of dispute resolution mechanisms, namely mediation, final offer arbitration, and public interest investigations, meant to be used in the event that shippers and carriers are unable to reach agreement on the terms and conditions for the transport of goods.

Continuing the pattern established in previous years, limited direct use was made of these provisions during 1991. This indicates that shippers and carriers are generally able to reach agreement without the involvement of the Agency and that the market was working as intended. As one medium-sized Ontario rail user put it: "[Carriers and shippers] should work out differences on their own. Methods of [dispute] resolution should be a last resort." In spite of the fact that these provisions are seldom formally used, most of the comments received from shippers support their retention in the legislation on the grounds that they are an "integral part of deregulation" (petroleum industry shipper) and that their availability "ensures a degree of moderation on both sides" (forest products industry).

## Summary

The provisions of the NTA, 1987 are designed to promote competition between railways and between modes. Shippers are generally positive about the impact of these provisions on their operations and count confidential contracts and competitive access among the most important factors in achieving competitive terms and conditions in rail services. Many shippers have also asserted that the provisions of the new legislation are most effective when considered all together as a package. A major chemical producer in western Canada aptly summarized the position of Canadian shippers:

"The NTA, 1987 provided shippers with competitive railway access, individually negotiated private versus published freight rates, and dispute resolution procedures. It is imperative that we maintain these access and competitive provisions after the scheduled five year review in 1992. These provisions are extremely important when competing against imports/exports (foreign competition)."

The Agency concludes that the entire integrated package of rail competitive access reforms, including confidential contracting and the dispute resolution mechanisms, has resulted in a more competitive market for rail services. These provisions have been very influential in creating an environment in which "competition and market forces are the prime agents" in providing transportation services.



## FINANCIAL PERFORMANCE

The recession has been a difficult time for Canada. Plant closures and production contractions have led to significant loss of employment. Job losses in the goods sector began in the third quarter of 1989, closely followed by service sector unemployment and income declines in 1990. Many industries have been forced to downsize in response to soft markets.

In 1991 the railways significantly outperformed many of the shippers they serve. Also, they have fared better than truckers, their chief competitors. The recession's debilitating impact on the manufacturing sector has done more serious damage to the financial health of the trucking industry. Looking at overall traffic volumes, the rail industry has been sheltered from the impact of prevailing soft market conditions primarily because of resurgent grain volumes.

### Rail Revenues

CN and CP Rail's combined revenues increased by 3.0% from 1990 to 1991. Freight revenues in 1991 were \$93.7 million higher than in 1990 for CN and \$67.3 million higher for CP Rail. Revenues are a function of volume and price. Both railways achieved increased tonnage levels for a combined increase of about 2.7% and, as survey results indicate, rates grew by just over 1 %.

Rail revenues were up in 1991 - despite the recession which has affected traffic levels.

Revenue is sensitive to grain volume (which moves under regulated rates) and the value of Canadian dollar.

The relative performance of various traffic classifications, the "traffic mix", is also a critical ingredient in revenue performance. Relatively high-rated manufactured goods accounted for a smaller proportion of total traffic in 1991. The major factor accounting for higher rail revenues is the increase in grain traffic (for which the railways receive non-market rates incorporating a guaranteed contribution). Grain shipments make a significant contribution to overall railway financial performance.

Several important factors have influenced financial performance since the implementation of the NTA, 1987. The impact of the recession began to be felt late in 1989. The prairie drought in 1988 had a crippling impact on grain shipments in 1989 and a surging Canadian dollar has disadvantaged Canadian exports since 1987. As well, trucking has, until very recently, made serious inroads into traditional rail markets.

The relative value of the Canadian dollar (vis-a-vis the U.S. dollar) has gained about 12 cents since 1987. Our dollar was worth \$0.7541 in 1987. In 1991, the value had increased to \$0.8728, while recently falling to \$0.83. A marginally higher result was witnessed against the G-10 currencies.

The CP Ltd. shareholder annual report for 1990 quantified corporate sensitivity of net income to the value of the Canadian dollar. For every cent increase in the Canadian dollar (against the U.S. dollar) the corporation loses \$15.1 million in net income. A relatively higher dollar can severely constrain Canadian competitiveness in export markets, thereby reducing rail traffic and revenues. Using CP Ltd.'s \$15.1 million figure, net corporate profits in 1991 would have been \$180 million without the appreciation of the dollar. A significant proportion of that profit would have come from rail operations.

Between 1984 and 1991, rail revenues from CN and CP Rail traffic originating in Ontario and Quebec went from \$1,733 million to \$1,632 million - a drop of over \$100 million. This loss in traffic resulted from production contractions due to the recession and market gains by the trucking industry.

#### Net Income

In CN and CP Rail submissions to the Agency on the fourth Annual Review, the railways acknowledged the importance of productivity improvements. CN stated: "We will continue to improve the productivity of our operations and achieve better utilization of assets and the network". In a similar vein, CP Rail asserted: "CP Rail continues its effort to adapt to competitive realities by restructuring its organization, streamlining operations, cutting costs, adopting new, more productive technology (and) upgrading the training of its workforce...".

Overall operating revenues have exceeded expenses on Canadian rail operations since the NTA, 1987 came into force. Nevertheless, both CN and CP Rail have recently reported net losses largely due to work force adjustment costs. Corporate restructuring costs sacrifice a one-time compression on annual income in return for greater future competitiveness.

Downsizing may be extremely expensive. The cost of CN employee separations in Canada in 1991 alone amounted to \$94.1 million. CP Rail's closure of Angus Shops, in Montreal, provided employees with eight years or more service full

Cost compression is a railway priority.

Restructuring costs - downsizing - had a negative impact on net income, and resulted in net loss, in 1991, of \$20 million for CN and \$6.9 million for CP.



wages and benefits, as long as they remain available for work. The Angus closure agreement covered 870 employees.

CP Rail reported an operating loss of \$3.4 million in 1991. This result follows \$250.9 million in restructuring charges. The 1991 annual report related this charge to the closure of the Angus Shops and other restructuring charges (including early retirement allowances and lump sum payments; bridging to early retirement payments and bonuses; severance payments; employee relocation benefits and employment security payments). Interest and other income tax adjustments resulted in a net loss of \$6.9 million for CP Rail. This compares to net 1990 income of \$164 million.

Similarly, CN had a net loss of \$20 million, a major improvement over the \$100 million net loss posted for 1990.

### **Canadian Railway Labour Productivity**

Labour is the largest single component of railway costs. Between 1985 and 1989, CN and CP Rail took nearly 40% of every earned dollar to cover railway employee salaries (extracted from Statistics Canada public data available to 1989 only). On average, U.S. railroad salaries consumed only 28% of revenues (from Association of American Railroads data). In 1991, the U.S. Commerce Department reported the average railroad industry wage in that country was \$55,924 (U.S.), or \$65,000 (Canadian). By contrast, the equivalent wage for Canadian railways was \$43,000. The average railway salary in Canada is some one-third lower than in the U.S. This demonstrates a clear and sizeable Canadian railway cost advantage in labour costs. Yet U.S. railroads consume less sales dollars per work unit.

The record shows collective bargaining agreements in the Canadian railway industry have long been characterized by restrictive work rules and generous settlements. Average weekly earnings for the rail sector increased at a rate higher than other sectors and the Consumer Price Index (CPI) between 1978 and 1991 and since 1988 consume 40% of revenue dollars.

Canadian railways are responding to this situation. They have been forced to cut staff dramatically in a more competitive transportation environment. In 1985, CN managed some 50,000 employees. In 1989, employment had been reduced to approximately 36,000. CP Rail employed nearly 28,000 staff in 1985 - dropping to 24,000 in 1989. The Agency has no information on how many of these employees are covered by employment security provisions, mentioned earlier, which were added to the collective agreements in 1986. It would appear that such agreements, freely entered into by both railways, would restrict the financial benefits to be gained from downsizing.

On March 16, 1992, CP Rail announced the abolition of about 500 administrative and executive positions. This staff reduction, and accompanying salary freeze, was initiated as part of an on-going downsizing program to remain competitive.

Railway administrative staff perform a variety of managerial and clerical functions. These skills are necessary to manage a complex and dynamic business. But the costs are high. A review of Canadian railway positions for 1990 indicates that one administrator exists for every two transportation employees. In the United States, railroads operate at a ratio of one to four. High administrative costs have had a detrimental impact on operating expenses and hence income.

A smaller more productive workforce is essential to free resources for increased capital investment and market responsiveness. In the short term, severance and cash-outs will continue to have a negative influence on income. However, long term benefits will accrue from fewer, more productive employees. Downsizing and the elimination of overcapacity are seen as critical for survival. Canadian railways know this and have begun restructuring to compete in a global marketplace.

### Tax Equity

CN and CP Rail are major participants in The Round Table on Transportation through the Greater Vancouver Gateway, which published in December 1991 a study on the relative positions of railways under U.S. and Canadian tax regimes (the Round Table Study). The Round Table findings, based on railway supplied information, serve as an excellent benchmark for Agency work.

Agency staff analyses indicate that Canadian fuel, sales and property taxes place a significantly higher burden on Canadian railways than they would likely bear if U.S. fuel, sales and property taxes were assessed on the same companies. The relative burden is not much changed if Canadian payroll taxes for CPP/QPP payments and U.S. Tier I payroll taxes equivalent to U.S. Social Security are added to the equation. Considering only the above taxes, Agency staff concur with the Round Table Study that \$225 million in 1990 is a good estimate of the additional total burden on the two major Canadian carriers.

The Round Table excludes millions of dollars in retirement taxes paid by U.S. railroads.

Railroad retirement contributions are clearly considered a tax in the U.S.

Canadian railways are not disadvantaged by the tax regime.



However, because Canada and the U.S. have different overall tax structures, it may be misleading to compare the balance of tax burdens and tax-paid benefits for carriers in the two countries using only a few elements of taxation.

In comparing the burden that Canadian railways would likely bear if assessed under the U.S. scheme, the Round Table study chose to exclude payroll taxes that Canadian railways would be assessed under U.S. law and that have no equivalent in Canada. For instance, U.S. railroads pay a payroll tax equal to just over 16% of wages to support "Tier II" retirement benefits. This tax is not assessed in Canada but applies to railways under federal jurisdiction in the U.S.

The U.S. Tier II taxes are distinct from Canadian company payments to their private pension plans, and the U.S. retirement benefits supported by Tier II taxes are distinct from private pension benefits. The amount that U.S. companies pay in taxes is set by Congress and the benefits that U.S. employees receive are also set by Congress and are not subject to negotiated changes. Strictly speaking, this is a tax burden on U.S. railroads for which there is no Canadian equivalent. However, because company pension costs in Canada go to support retirement benefits, these pension costs were in fairness balanced against Tier II taxes that would be payable in the U.S. for retirement benefits.

The inclusion of U.S. retirement taxes in this comparison reverses the results of the Round Table Study. Canadian railways would pay an estimated \$230 million per year more in pension taxes under the U.S. regime than in pension costs under the Canadian one. Considering all taxes and pension costs, CN and CP Rail combined would have paid slightly more under the U.S. regime than under the Canadian one, according to this analysis.

Tax rates alone, of course, are not the sole indicators of the total tax burden on any tax-paying entity. Tax rules used in calculations and the related accounting practices are clearly important. For instance, U.S. tax rules require railroads to capitalize and depreciate over time the costs of labour on various track construction projects. In Canada, railways deduct the full amount of labour costs in the year they are incurred. This rule therefore provides an additional element of tax advantage to Canadian railways.

Comparing tax regimes is complex and therefore may easily mislead. In comparing taxes, many factors must be weighed and including only some of them may completely change conclusions. As well, comparing taxes without comparing benefits provides an unbalanced picture that distorts the total effect of different tax regimes. The links between tax costs and the benefits are not simple and direct. Taxes paid by transportation companies are not simply "transportation taxes".

## Summary

The above analysis of Canadian and U.S. tax regimes suggests that when all taxes are considered, railway tax liability under Canadian and U.S. regimes are similar. Hence, Canadian carriers are not disadvantaged by the tax regime. In addition, the recession, trucking competition, changing trading patterns, a higher Canadian dollar, and prairie droughts have all had an impact on railway financial performance. The rail reforms contained in the NTA, 1987 have not impaired railway financial viability or constrained investment in acquisitions or capital projects.

## SERVICE AND INDUSTRY STRUCTURE

Traditional railway operating practices have undergone significant changes since the passage of the NTA, 1987, in order to meet the competitive requirements of service to shippers.

Historically, Canadian rail traffic levels have been a reflection of the performance of the national economy, with a particular sensitivity to the fortunes of western grain agriculture. As well, truck gains in market share have been instrumental in suppressing the overall growth of rail transportation. However, the inroads made by highway carriers into traditional railway markets continue to be challenged by aggressive intermodal marketing and improvements in service.

Canadian rail traffic peaked in 1987 and 1988, fell dramatically in 1989 and rallied in 1990 to approximate traffic levels experienced in 1985 and 1986. Traffic levels continued to grow in 1991 maintaining this upward progression. Tonnage levels increased by 2.7% in 1991. Canadian railways (both Class I and II) moved over 250 million tonnes of freight in 1991. Five major commodity groups generated over half the total freight. They are (in order of tonnage carried):

- coal
- iron ore and concentrates
- wheat
- potash
- barley, oats and other grains

The resilience of the rail industry in maintaining traffic tonnages through a crippling recession is noteworthy. The railways have been able to increase traffic volumes by becoming more oriented to the needs of their customers and restructuring to meet the demands of the marketplace.

In addition to the improvements in service and terms and conditions noted in the preceding sections, other developments service have



been identified by Agency surveys carried out for the Annual reviews. For example:

- Shippers report a shift from truck to rail carload or to rail intermodal with an increasing number giving rates as the primary reason for the shift. Agency survey data support the contention that there is competition in the transportation marketplace between trucking companies and railway companies and that railways are closing the gap separating them from trucks in the eyes of many shippers.
- Shippers indicate improved competition between Canadian railways. Two-thirds of respondents to the Agency's shipper survey in 1991 indicated that Canadian railways were interested in competing against each other. Shippers also indicate that both extended interswitching and competitive line rates increased bargaining power during transportation negotiations.

The new competitive regime exposed railways to the realities of the marketplace and forced them to become more sensitive to shipper needs. These needs are reflected in the changes in railway operations and structure since 1987. The two major trends are: greater emphasis on intermodal services and an increased continental orientation.

The mid to late 1980's were a period of steady growth in transborder merchandise trade. Canadian shippers stand to benefit from the introduction of greater competition and efficiencies in continental transportation markets. Canada's rail industry has responded to a major shift in traditional North American shipping patterns and changing demands in the market place.

In 1991, the formation of CN North America and CP Rail System indicated that traditional Canadian railway operations would now be viewed from a broader North American perspective. CN and CP Rail were very successful, through acquisitions, strategic market alliances and operating rights, in extending their reach to U.S. transportation markets. The railways are now well positioned to compete more effectively for the growing north-south traffic markets. This structural integration results in new competitive services -- and puts intense pressure on established services to respond competitively.

The following is an overview of recent structural changes made by CP and CN which are an indication of a greater orientation to the competitive realities facing shippers today.

#### **Canadian Pacific**

CP Rail has targeted service enhancements and faster, more consistent delivery times as primary goals. In 1991, CP Rail

aggressively pursued and achieved a greater influence in North American rail transportation. This activity has elevated CP Rail to become the fifth largest railway on the continent in terms of revenue tonne miles and the sixth largest railway employer.

CP Rail's purchase of the D & H provided CP Rail access to 44 million people in the Washington - Philadelphia - New York

corridor. This acquisition was completed after CP Rail confirmed operating rights over Conrail tracks to establish access to the ports of New York and Philadelphia. These expansionary initiatives followed a previous move to consolidate control over the Soo Line. Full ownership of this U.S. railroad was attained through the purchase of the remaining 46% of stock not under CP control. Attaining full ownership of the Minneapolis based Soo Line gave CP Rail direct access to more than 66 million people within a 650 kilometre radius of Chicago. Shortly after the D & H purchase, CP Rail restructured to integrate both the U.S. and Canadian rail operations, and formed CP Rail System.

CP Rail has also entered into important strategic alliances with both the Norfolk Southern and Southern Pacific Railroads. These alliances complemented a previous two year agreement with CSX Transportation to move phosphates. CP Rail and Norfolk Southern introduced the first international RoadRailer service. CP Rail now handles RoadRailer trains between Detroit and Toronto (via the Detroit River Tunnel). A marketing agreement with Southern Pacific established greater potential for traffic interchanges moving to and from the U.S. south-west.

It is noteworthy that CP Rail's expansion was accomplished during difficult, recessionary times. While the acumen of these initiatives must be subjected to the test of time, CP Rail is now well positioned in several U.S. transportation markets -- particularly the north-east, south-east and mid-west sectors.

Double-stack trains now dominate the movement of containers from U.S. west coast ports to the American midwest. Departures of double-stack trains have increased from an average of six trains per week in 1984 to 250 trains per week in 1989. This is not surprising as operational savings over conventional trains are estimated to be in the range of 25 to 30%. Canadian railways have been slow to adopt this technology.

For many years CP Rail has contended that volumes and traffic mix would not warrant the investment required for Canadian double-stack

CP Rail has expanded its continental network through acquisition of U.S. track, consolidation of control of the Soo Line Railroad and strategic alliances.

CP Rail is investing in Double Stack operations and other intermodal services.



operations. As well, Canadian railways have been reluctant to sell block rail services to ocean carriers or others -- originally a mainstay for successful double-stack operations in the U.S.

In 1991, CP Rail announced a two-year, \$15 million undertaking to raise tunnel clearances in the Rocky Mountains. Once completed, CP Rail could run double-stack trains between Vancouver and central Canada. This initiative could signal that Canadian railways are recognizing the importance of double-stack trains in providing efficient, competitive service to Canadian shippers.

In September of last year CP Rail opened its \$30 million Vaughan Intermodal Terminal near Toronto. It is designed to handle domestic and international marine containers.

### Canadian National

CN's strategic alignments mirrored CP Rail's moves to focus on U.S. and transborder markets. In December of 1991, CN announced the formation of CN North America, integrating Canadian operations with three U.S. subsidiaries -- the Grand Trunk Corporation Railroad; the Duluth, Winnipeg and Pacific Railway and the Central Vermont Railway. As well, CN has entered into strategic agreements with Union Pacific, Burlington Northern and Norfolk Southern railroads. These alliances were formed to vigorously market surplus boxcar capacity returning from U.S. destinations and to better compete with highway carriers for transborder freight shipments.

CN has also re-structured operations and formed strategic alliances - to achieve a continental orientation.

CN is investing in intermodal services and a tunnel from Sarnia to Port Huron, Mich.

CN's restructuring is designed to better serve the growing north/south traffic orientation. Efficiencies gained through the consolidation of operations and traffic gains from strategic alliances with U.S. railroads stand to provide Canadian shippers with better rail service and rates. However, the Grand Trunk Corporation Railroad recorded losses of \$55.4 million last year, contributing significantly to the overall 1991 loss of Canadian National Railway System.

CN continues to invest heavily in intermodal infrastructure, primarily in terminal facilities. A new \$19 million intermodal terminal at Port Mann, B.C. serves as a case in point. Of particular interest, was CN's announcement to operate two dedicated double-stack services from Vancouver to central Canada. An additional investment in double-stack equipment (known as "five-paks") in 1991 and an overhead tunnel clearance project further demonstrate a growing commitment to this technology. The "five-

paks" will be used in the Moncton-Montreal-Toronto corridor and the clearance project will allow for double-stack services from coast-to-coast.

CN recently announced a \$155 million investment in a rail tunnel beneath the St. Clair river to connect Sarnia, Ontario and Port Huron, Michigan. This tunnel, expected to be completed in 1994, will shave 12 hours off current trip times by replacing barge movements across the St. Clair River, or movements through the Detroit River Tunnel unable to handle double-stack, tri-level and shielded auto cars. This route handles more than a million containers annually. The new tunnel will benefit the automobile industry which depends on tri-level and other specialty cars for the efficient movement of vehicles.

In a related development, M.O.Q. Rail Inc. has been developing technology somewhat similar to the RoadRailer service operated by Norfolk Southern and CP Rail. In December 1991, CN acquired an equity interest in M.O.Q. Rail Inc. and agreed to jointly test this new technology.

### **Cost Reduction**

As discussed in the section on Financial Performance, both railways place a high priority on cost reduction in order to be competitive. This means an emphasis on improving the productivity of plant and labour. Between 1980 and 1990, the average salary increase for Canadian railway workers was 82% -- and only 65% for U.S. railroad employees. Under the previous regulatory regime, Canadian railways could pass on most cost increases to captive shippers. The new competitive regime, introduced by the NTA, 1987, has made this practice more difficult. Labour downsizing and new arrangements with operating trades has been, and will remain, a priority.

The introduction of pricing freedoms and greater competition in transportation markets in 1988 was expected to exert a downward influence on rail rates. It was important, therefore, that the new regulatory regime -- recognizing the importance of freedom to manage -- introduced measures to facilitate cost compression - in particular a rationalization process sensitive to the needs of shippers, communities and railways.

New line abandonment procedures expedited the process of reducing unprofitable lines. Time limits, rules governing decisions and criteria for abandonments were key elements. The new provisions established a more consistent and responsive approach to abandonments. In addition, the NTA, 1987 introduced measures for the conveyance of lines to other railway companies, as well as new running rights, joint track usage and transitional funding arrangements.



In 1991, as in prior years, CN and CP Rail did not apply to abandon the statutory limit of 4% of total trackage. This has restricted cost compression. Between 1988 and 1991 the Agency has approved abandonment applications for 2,900 miles of track -- representing 7% of CN's total trackage and 9% of CP Rail trackage. It should be noted, however, that over 2000 miles of marginally profitable grain trackage are excluded from the abandonment provisions of the NTA, 1987, due to Governor in Council prohibition orders.

Considerable savings can be obtained through rationalization of services.

Railways have not taken full advantage of new provisions.

Railways have not abandoned statutory limit (4%) of track in any year since 1988.

Conveyances, leading to creation of short-line or regional operations, have been minimal.

The savings to the rail system generated by abandonments, for the four years after enactment of the NTA, 1987, are roughly three times greater than for the four years prior to 1988. This statistic demonstrates the impact of the new abandonment provisions. Further savings have been limited by a lack of railway applications. To the extent that Agency decisions, approving abandonment, are overturned or delayed as a result of appeals actions, there can be a reduction in savings available to the railways.

As of January 1992, nine applications for the conveyance of rail lines have been approved by the Agency under the provisions of the NTA, 1987. These conveyances represent roughly 700 kilometres of track. For most of these cases, the lines would have been the subject of an abandonment application and possibly ordered abandoned if conveyance had not occurred. Because of these conveyances, shippers have benefitted from continued rail service. The railway company conveying the line has benefitted by divesting itself of a marginal operation within its network while potentially retaining the long haul for traffic originating or terminating on the line.

Clearly, the evolution of short line railways in Canada has not occurred as initially anticipated. CN and CP Rail have only recently shown an active interest in the conveyance of lines to short line railways. To date, this heightened interest has resulted in three conveyance agreements of significance with only one case resulting in a new railway company being created.

In 1991, the Agency surveyed Canadian shippers on the effectiveness of the current rail rationalization process. A total of 54 rail users responded. Approximately half the respondents supported the present rationalization provisions in the legislation, about one-

third wished for more liberal procedures and the remainder wanted a more restrictive process.

Rail rationalization would appear to be one area where the railways and their largest customers are in broad agreement. CN takes the position that "further streamlining is warranted in the line abandonment process". CP Rail identified "rail line rationalization procedures that constrain freedom to manage" as an issue needing to be addressed. Large rail users favour a more streamlined process because it could reduce costs to their benefit.

### Summary

The railways have demonstrated an ability to unlearn their rigid practices of the past, and through their capital investments they are becoming more competitive. Coupled with the provisions of the NTA, 1987 that allow them greater managerial freedom, their interests and those of shippers will be better served.

### FUTURE PERSPECTIVES

Canadian railways face a dilemma operating in this country. Many Canadians see CN and CP Rail as cornerstones of our economy -- national institutions working for the general good of Canada. This perception is largely fuelled by the historic role the railway played in the development of the country. As well, a certain payback mentality prevails, resulting from the significant financial contributions given the railways by the Government of Canada over the years. The protective blanket, offered the railways through successive regulatory regimes, also contributes to the perception of a well-entrenched closeness between government and the railways.

Reality, however, is very different. CP Rail System is a business responding to the legitimate profit aspirations of its shareholders. CN, while a Crown corporation, is also expected to operate with a bottom-line objective.

The NTA, 1987 exposed the railways to competitive forces.

Service to shippers has improved. Competitive access provisions have been effective.

The railways are competing aggressively in transborder and intermodal markets.

Railway financial viability has not been impaired by the NTA, 1987.

The tax regime does not disadvantage Canadian railways.

Railways can be competitive if they continue to address issues related to cost.



Historically this dichotomy in perception between national institutions and corporate enterprises has served to complicate policy formulation. The NTA, 1987 helped clarify this issue by identifying competition and market forces as the prime agents in providing viable transportation services. The protective blanket was effectively removed and the concept of compensation for imposed public duties was contained in the statement of national transportation policy.

Consider the recent statements made by CP:

"We must avoid trying to protect industry from competition, a tactic we have tried in the past, sometimes to advantage. Those days will not return. Protectionism is obsolete."

"Business needs equitable taxation equal to that afforded our trading partners, not subsidies and grants. Allow us tax equity, and we will give up handouts without complaint."

The first remark is in total harmony with the fundamental objectives of the NTA, 1987 -- the denial of protectionism in favour of a more competitive transportation environment. The second statement, in effect, links the pursuit of competitiveness to the end of protectionism and subsidies given tax equity with trading partners.

Transborder (continental) markets have recently been characterized by a strong CN and CP Rail strategic focus with particularly heavy activity in the United States. CN North America and CP Rail System have strategically aligned themselves for head-to-head competition with U.S. railroads and highway carriers. The same competitive stance holds for intermodal markets. Here, both CN and CP Rail have invested substantially in domestic intermodal terminals. This common strategy is not surprising given that intermodal traffic is a vital element of the north-south markets. Little protectionism is at work in both these spheres. Corporate strategies indicate that the railways' will to compete is apparently strong.

By contrast, western grain transportation is heavily regulated - any intramodal railway competition is effectively prevented by government regulation. Bulk resource shippers, on the other hand, enjoy a limited amount of competition that has been considerably enhanced through the competitive access provisions of the NTA, 1987.

Agency analysis suggests that CP Rail's prerequisite for competition -- tax equity -- is, in fact, already in place. Canadian railways actually enjoy a tax advantage over their U.S. counterparts. The railways have proven to be willing, aggressive and successful competitors in transborder and intermodal traffic markets that are subject to intense international competition. In

the third segment, western grain, they are still protected from competition. The rail regulatory reforms introduced by the NTA, 1987 were designed to facilitate competition in a fourth, vitally important, business segment: bulk resource traffic. The Agency has concluded that these reforms have achieved that goal.

Shippers now have improved access to competitive transportation services. Railway financial viability has not been threatened by the 1987 reforms. As a result of recent structural changes, the railways are well positioned to compete for business in a North American context, so long as they demonstrate the ability to become cost effective.

### MARINE

The principal change in transportation legislation affecting marine transport was the passage of the Shipping Conferences Exemption Act, 1987 (SCEA). SCEA replaced the former Shipping Conferences Exemption Act, 1979.

SCEA provisions govern the conditions under which conferences of ocean shipping lines and their collective activities are regulated in Canada. Conferences are associations of liner companies operating on common trade routes that collectively agree on rates and terms of service. Liner companies offer regularly scheduled ocean transportation services, as opposed to irregular "tramp" or non-liner services. Liners primarily carry containerized merchandise, rather than bulk goods.

The former Act exempted certain anti-competitive practices (e.g., collective rate-setting and conditions of service) of shipping conferences serving Canada from the provisions of Canada's anti-trust legislation - the Competition Act. The new SCEA retained this exemption while introducing measures to encourage greater competition among ocean carriers for shipper business. Some of the key provisions of SCEA include:

Limited use of new provisions of SCEA.

Competition in the liner shipping industry is strong.

Rates remain depressed due to overcapacity.

- Service contracts between a shipper and one or more conference members are permitted. These contracts are filed with the Agency and are kept confidential.
- Conference members have the right to independent action - where other members are notified. Independent action allows



a conference member to offer a rate or service different from the conference's established tariff.

- Conference members can jointly fix and quote multimodal rates. Members are prohibited from negotiating as a group with inland carriers.

- Conferences are prohibited from requiring shippers to commit all of their freight under the terms of "loyalty contracts"

In addition, the Act introduced new procedures for complaints to the Agency where conference agreements or practices are felt to cause unreasonable reductions in service or unreasonable increases in rates.

### **Impact of SCEA**

Movements in liner services account for only 7% or 17 million tonnes of total Canadian tonnages moved in 1990. This tonnage is primarily higher value-added traffic and often containerized. Tonnages moved by conference lines comprise about 41% of total liner tonnages. Therefore, approximately 3% of total Canadian cargoes in 1990 were moved by shipping lines subject to the provisions of SCEA.

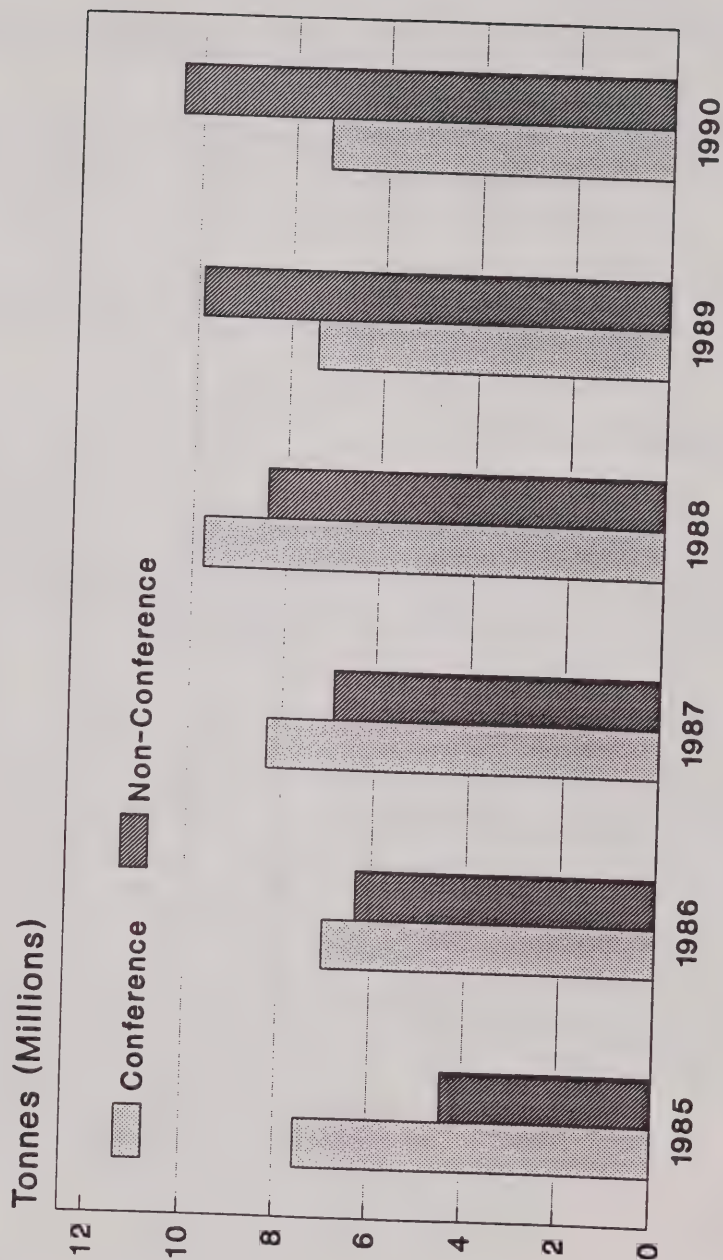
Figure 4 shows that the volume of freight carried by the conference liner trade, relative to non-conference services, has declined since 1988. Further, as shown in Figure 5, the number of conferences serving Canada has been declining for a number of years - from 34 in 1987 to 24 in 1991. This decline has been most pronounced in eastern Canada where the number of conferences has declined from 21 in 1987 to 13 in 1991. Despite this decline, conference services maintain a presence on all of Canada's major trade routes, as do non-conference lines.

Further, Figure 6 shows annual fluctuations in the number of conference liner services to and from western Canada and an absolute decline since 1987. In contrast, the number of conference services to and from the east coast is about the same today as it was in 1987. Notably, non-conference services maintain a strong presence on each coast. On the east coast the number of non-conference services exceed conference services. On the west coast the number of non-conference lines has increased while the number of conference lines has declined slightly.

The level of competition has allowed rates to remain stable or decrease marginally. A recent study of shipping conference tariffs shows that rates for a number of major commodities are currently below 1983 levels, although rates do vary between trade routes.

Figure 4

# Canadian International Liner Cargo through Canadian and U.S. Ports

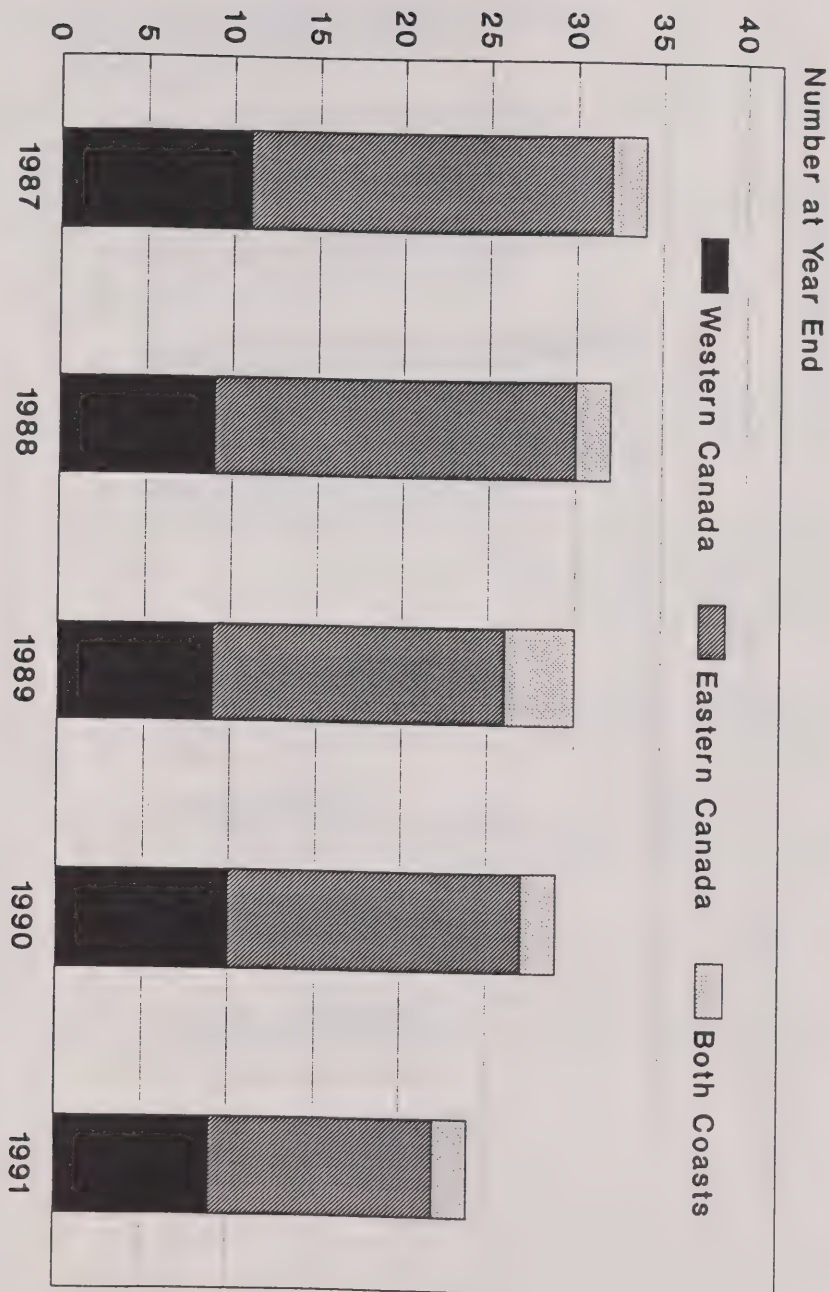


Note: Tonnages in 1989 and 1990 include Canadian transshipments through U.S. ports.  
Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics



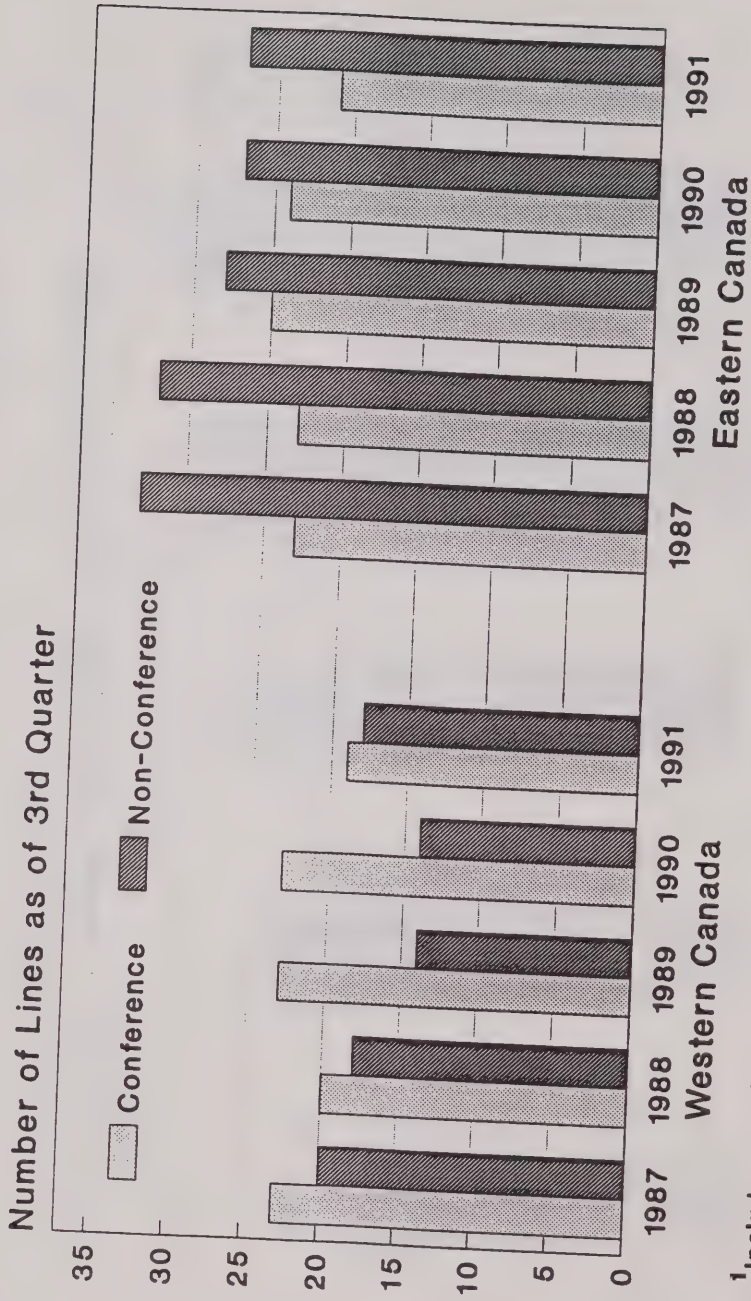
Figure 5

# Number of Conferences Serving Canada



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics

# Liner Services<sup>1</sup> on Major Eastern and Western Canadian Trade Routes



Note: <sup>1</sup> Includes services via U.S. ports and mini-landbridge services.  
 Comprehensive Review Staff Working Group  
 National Transportation Agency of Canada  
 Source: Agency statistics



From a shipper's perspective, service levels have also improved since 1988. These improvements have been caused by external factors and not by SCEA. These factors include:

- The availability and competitiveness of non-conference services.
- Depressed ocean freight rates due to persistent overcapacity on many Canadian liner trade routes.
- The dominant influence of global competitiveness which has forced conferences to agree to requests for rate concessions, negating the need for service contracts.

### **Activity under SCEA Provisions**

There has been limited use of the Act's major pro-competitive provisions - confidential service contracts and independent actions by conference member lines - in setting rates or conditions of service.

Despite an increase, from 6 in 1989 to 18 in 1991, in the number of service contracts filed with the Agency, this provision has not been widely used. According to Agency surveys of Shipping Conferences, only a small proportion of Canadian conference trade has moved under service contracts.

The use of independent action was more extensive particularly on Transpacific routes. Its use has been limited in scope on other routes. Member lines of thirteen conferences filed independent actions with the Agency in 1990.

To a large extent, it would appear that the use of these provisions by shippers has not been necessary due to the level of competition that exists in the liner service industry.

The Agency has received only one formal complaint since the Act's introduction. The Canadian Shippers Council (CSC), the only designated shipper under SCEA has indicated its view that the current complaint resolution mechanisms in the Act are ineffective. This may account for the lack of formal complaints filed with the Agency.

### **Emerging Issues**

Liner services in international shipping are constantly evolving and must now be viewed in a global or at the very least in a continental context, largely beyond Canadian control. Conference and non-conference operators continue their quest for more

economical means of providing service in what has become a highly integrated intermodal transportation network serving international markets.

Ocean carriers continue to take a number of measures to rationalize their services, reduce overcapacity and provide service options, with the goal of improving their financial performance. While results will

vary from trade route to trade route, despite renewed growth in the demand for container services, forecasts suggest that overcapacity will continue to exist throughout the first half of the decade. Accordingly, this will have a dampening impact on rates.

Canada is a small part of a much larger North American market now being targeted by conferences operating in Canadian and U.S. markets. To assure the competitiveness of Canadian shippers in world and North American markets, they must have access to liner services at an affordable cost. In the past, Canadian liner shipping policy has sought to address this need in a manner generally consistent with that of Canada's major trading partners. Policies governing shipping conference operations both in Canada and the U.S. are now generally similar because the corresponding statutes (SCEA and the U.S. Shipping Act of 1984) are now generally similar. The U.S. government has been reviewing its maritime policy and it is not yet clear what changes, if any, will be made to its current legislation.

The Canadian port system has a strong interest in the continued use of Canadian gateways by liner services, both conference and non-conference, serving North America. As liner services continue to rationalize their services, ports of call decisions are being based, among other factors, on the cost and effectiveness of the total inland transportation component, including port and terminal operations. Canadian ports have begun to work closely with the railways and others to develop "seamless" cost competitive routings through their gateways. Factors such as the increased use of Electronic Data Interchange (EDI), improved terminal productivity and cooperative partnerships with Canadian railways are important to the success of these efforts.

Each of these issues affects the environment within which the Review Commission must examine the continuing need for the Shipping Conferences Exemption Act, 1987.

Liner services must be viewed in global or continental context. Policies should remain consistent with major trading partners.

Liner services must work closely with other modes to develop competitive routings and services.



## AIR SERVICES

The NTA, 1987 removed most economic regulation of air transportation in southern Canada and changed the regulations in northern and remote regions of Canada.

In southern Canada before the NTA, 1987, market entry controls required applicants to show that proposed services met public necessity and convenience criteria. Now, carriers must be Canadian and need only demonstrate that they have met safety and insurance standards. Before, to reduce or discontinue a service carriers had to get approval. Now, the carrier need only give notice. Carriers no longer need to file fares and rates, merely display them. The NTA, 1987 allows the Agency to control increases in basic (economy) fares on monopoly routes in southern Canada.

The NTA, 1987 recognized the special role of northern and remote air transport. In northern and remote services, carriers must also prove themselves fit. Additionally, a person or company can request that the Agency refuse to grant the licence, but they must prove that the service would harm the public. On northern and remote routes, the public can complain to the Agency about a rise in basic (economy) fares; if the Agency finds these fares unreasonable, it may reduce them. In the north, the scheduled, charter and specialty licence categories remain, and the Agency may restrict licences to specific routes and types of aircraft.

International air service provisions remained the same except for some administrative streamlining.

### **Service**

Following the introduction of the new legislation, the economy entered a recession which reduced the demand for air services. This has influenced the level of service provided by air carriers since the third quarter of 1989.

Scheduled passenger traffic increased as the economy improved after the 1981-82 recession and after the regulatory controls were relaxed somewhat in 1984. Between 1983 and 1990, scheduled passenger traffic in Canada rose by over 47%, with most of this increase occurring between 1983 and 1987. Passenger traffic began to drop in 1989 and has continued its decline into 1991. The demand for air service was also affected by the Gulf war which caused fuel prices to rise and so, for a short while, raised air fares.

As a result of reduced demand carriers changed their service. On the top twenty-five routes the number of flights increased between 1987 to 1989 and has been decreasing since late 1989. The number of seats offered shows a similar trend. When compared to the years

before 1988, however, service to travellers and shippers has improved, despite the recent drop in demand for service during the recession. (Figures 7 and 8). Compared to 1983, flights and seats offered in 1991 have increased by 51% and 20%. Indicative of growing competition from regional airlines in these markets, the number of non-jet flights has also increased relative to the mid-1980's.

Further, as shown in Figures 9 and 10, both flights and seats offered have increased in all regions since 1987. Notably, there has been a significant increase in service in all regions relative to 1983. Similar to the trend on the top twenty-five routes, non-jet service has grown in all regions.

Overall, there is now more competition in both southern and northern Canada, as shown by increased service in the all markets and an increase in the number of routes served by two or more carriers since 1988, which is shown in Figure 11.

Changing markets have given rise to changes in the structure of the air industry. Air services are dominated by two large carriers - Air Canada and Canadi\*n - that now provide extensive route networks using affiliated regional carriers. In the early 1980's the air industry had prescribed roles for carriers. Smaller companies served as collectors and distributors for regional and national carriers. Since the mid-1980's this has been replaced by two networks linked to the larger carriers. These networks have grown through purchases of independent carriers, mergers and alliances. This allowed airlines to link national, regional and local flights and has produced two competitive networks - each affiliated with one of the large carriers.

The downturn in the economy which began late in 1989, reduced demand for passenger air travel. This, combined with the Gulf war which raised oil prices and led to increases in fares, squeezed the two large carriers' revenue. Faced with overcapacity, they were forced to reorganize service, lay off employees and offer widespread discounts in fares. The slumping economy forced large airlines to accelerate the transfer of service on most low density routes, (which began in the mid-1980's), to their regional affiliates.

Air service has been affected by the recession.

Large carriers were forced to reduce excess capacity and transfer service to regional affiliates.

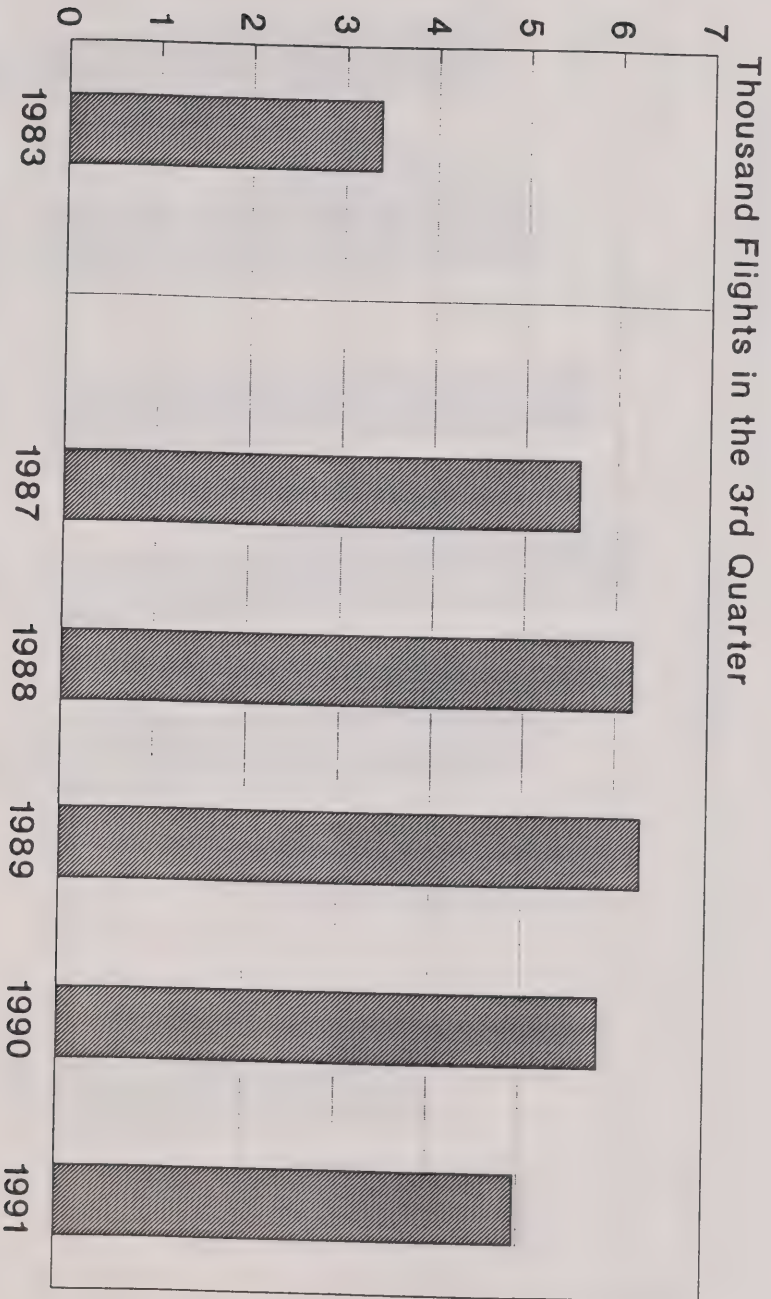
Regional affiliates have expanded networks and service.

The level of service has improved relative to the years before 1988.



Figure 7

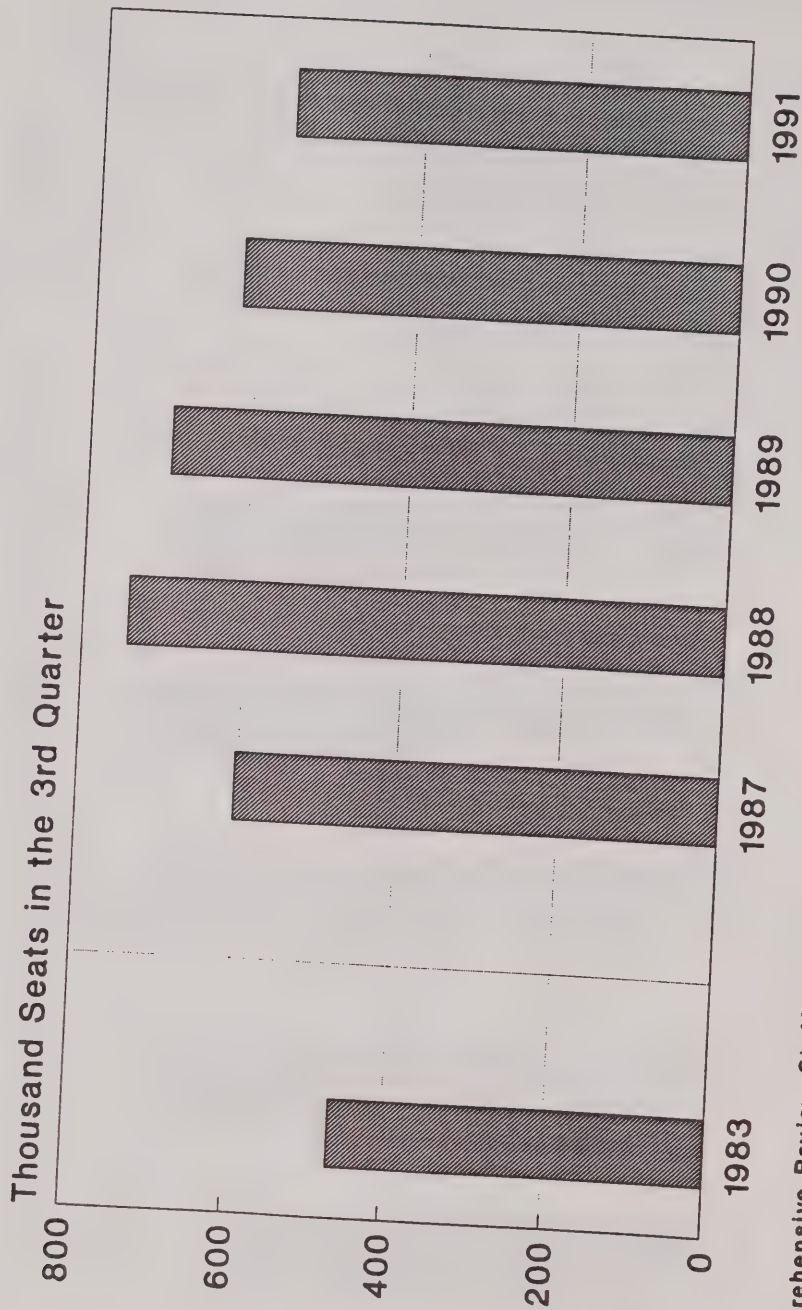
## Weekly Scheduled Flights in the Top Twenty-Five Canadian Markets



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics

Figure 8

## Weekly Scheduled Seats in the Top Twenty-Five Canadian Markets

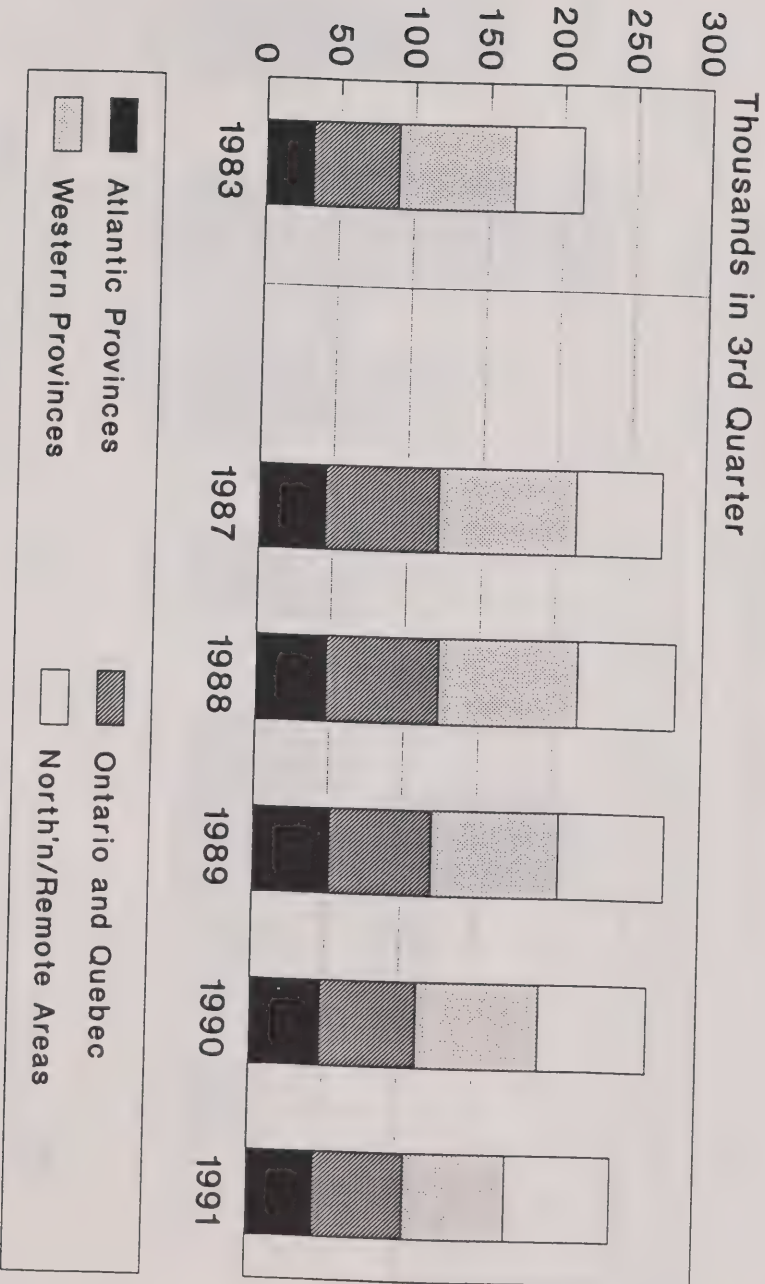


Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics



Figure 9

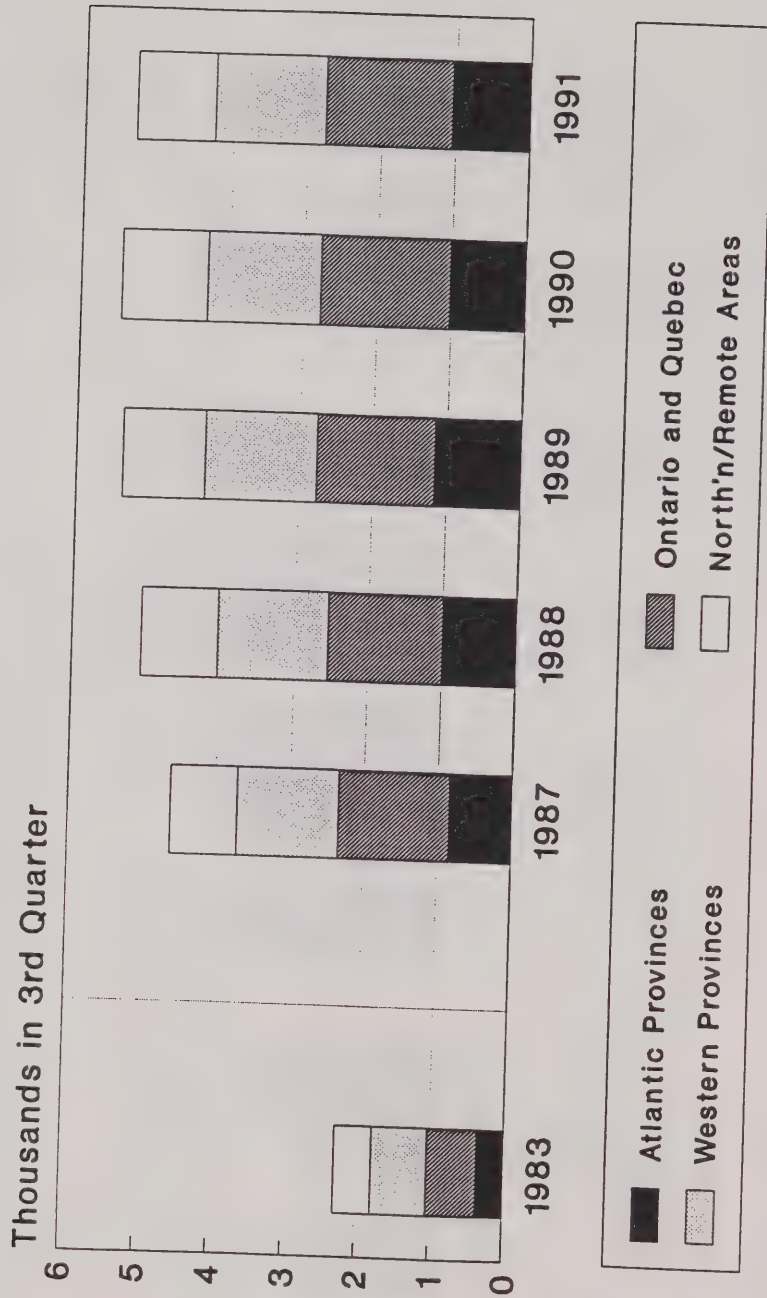
# Weekly Scheduled Seats in Canadian Regional Markets



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics

Figure 10

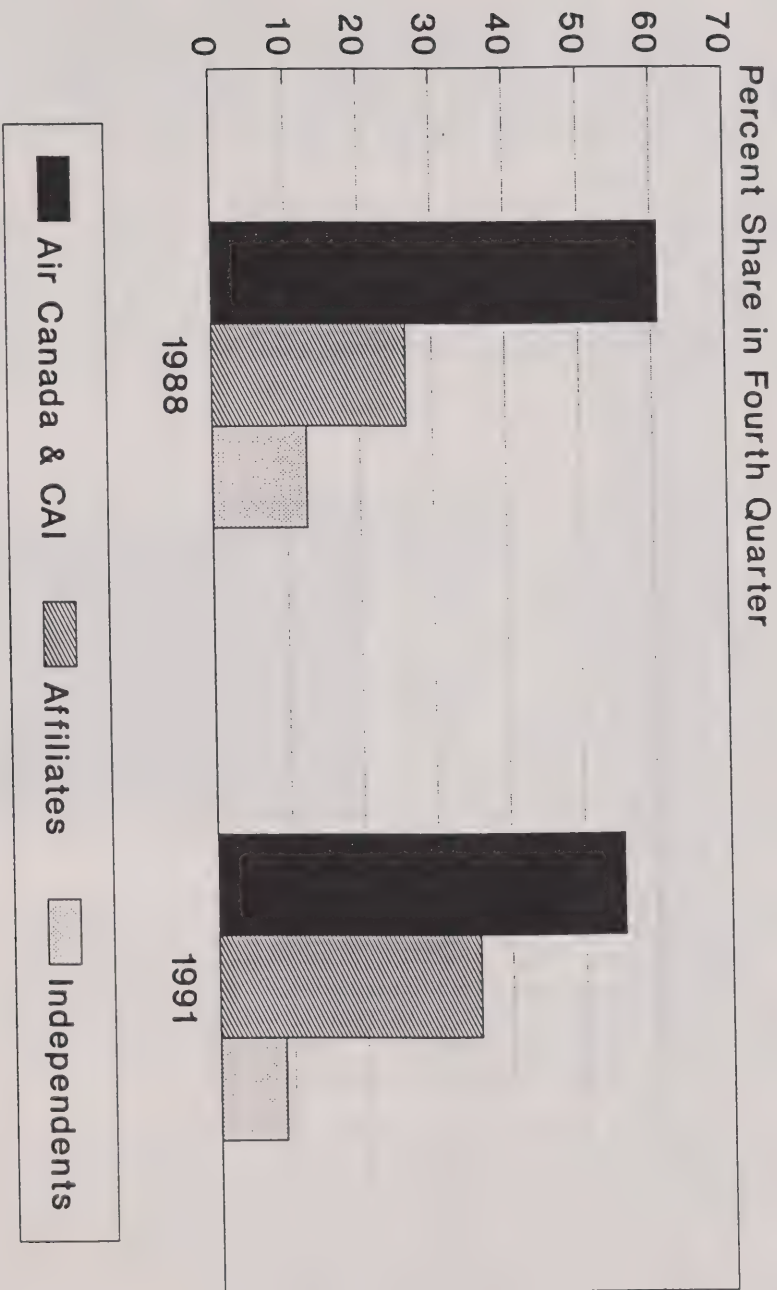
# Weekly Scheduled Flights in Canadian Regional Markets



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics



# Share of the Total Weekly Seats by Sector



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Transport Canada

Currently, the two large carriers - Air Canada and Canadian - suffer short-term difficulties due to reduced demand on high volume routes and long haul routes and have had to deal with excess capacity by reducing service on some routes. But more flights and seats are offered than during 1983 to 1987, when the economy was strong, giving travellers more choice and flexibility. Although some communities lost a major carrier's jet service, usually it was replaced by higher frequency turboprop and/or smaller jet services provided by regional affiliates of the large carriers and local "niche" carriers.

Using more non-jet service, affiliates of the major carriers continue to expand their service by taking over routes from major carriers, and by extending service to new "local" markets. As a result, these carriers have increased their share of seats, since 1988, as shown in Figure 12. The expansion of regional carriers has been effective in linking northern and remote communities to the networks of major carriers.

## Fares

Increased competition, resulting in more widespread use of discount fares, has curbed increases in air fares. Both economy and discount airfares have increased since 1987 but, as shown in Figure 13, average fares (in constant dollars) have been fairly stable since 1987. Average fares in 1991 were only 6% higher than in 1987 due to the increased use of discount fares since 1987.

Average fares (in constant dollars) have only marginally increased since 1987.

"Reverse onus" provisions, for opposing northern air licence applications are not effective.

Statistics Canada's "Fare Basis Survey" reports an increase in both the economy (including business class) fare index and the discount fare index for domestic scheduled services operated by Level I carriers between 1987 and 1990. The economy fare index was higher than the Consumer Price Index (CPI) over the same period. Comparison with the CPI however, does not take into account the increased use of discount fares since 1983.

Figure 14 shows a steady increase in the use of discount fares since 1983. Discounts are now available on most routes, in both the south and the north and may be as much as 50% less than economy or basic fares. On both high-density and popular long-haul routes, carriers use discounts to fill seats and compete. But, discounts have been higher on long haul routes because charter operators compete on these routes. In the second quarter of 1991, over 65% of passengers on domestic flights in southern Canada and 42% of



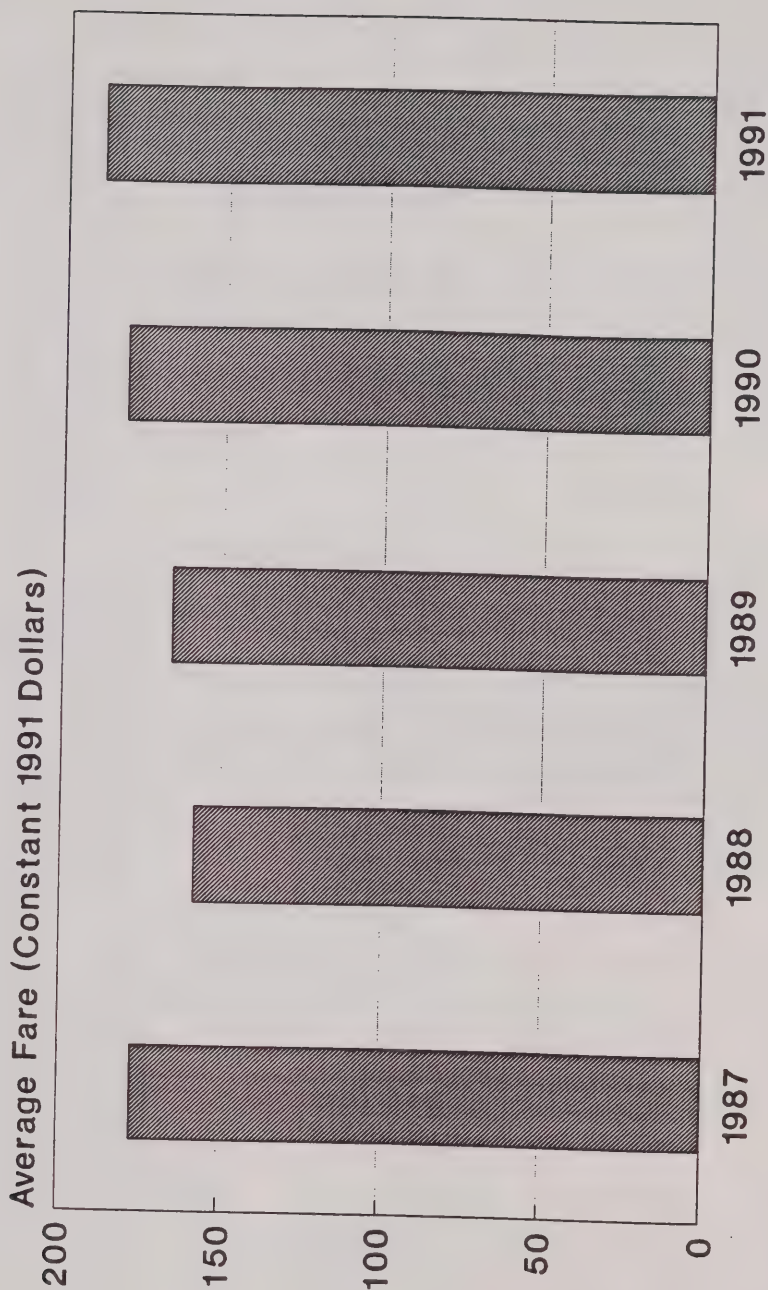
## Other Air Statistics

Year	Licenses Held in Canada	Routes in Canada Served by Two or More Carriers %	Cargo Handled at Canadian Airports (000,000 kg)
1983	-	16.6	-
1988	1,858	23.2	620
1989	2,012	28.8	714
1990	2,198	30.8	722
1991	2,430	28.4	684

Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics

Figure 13

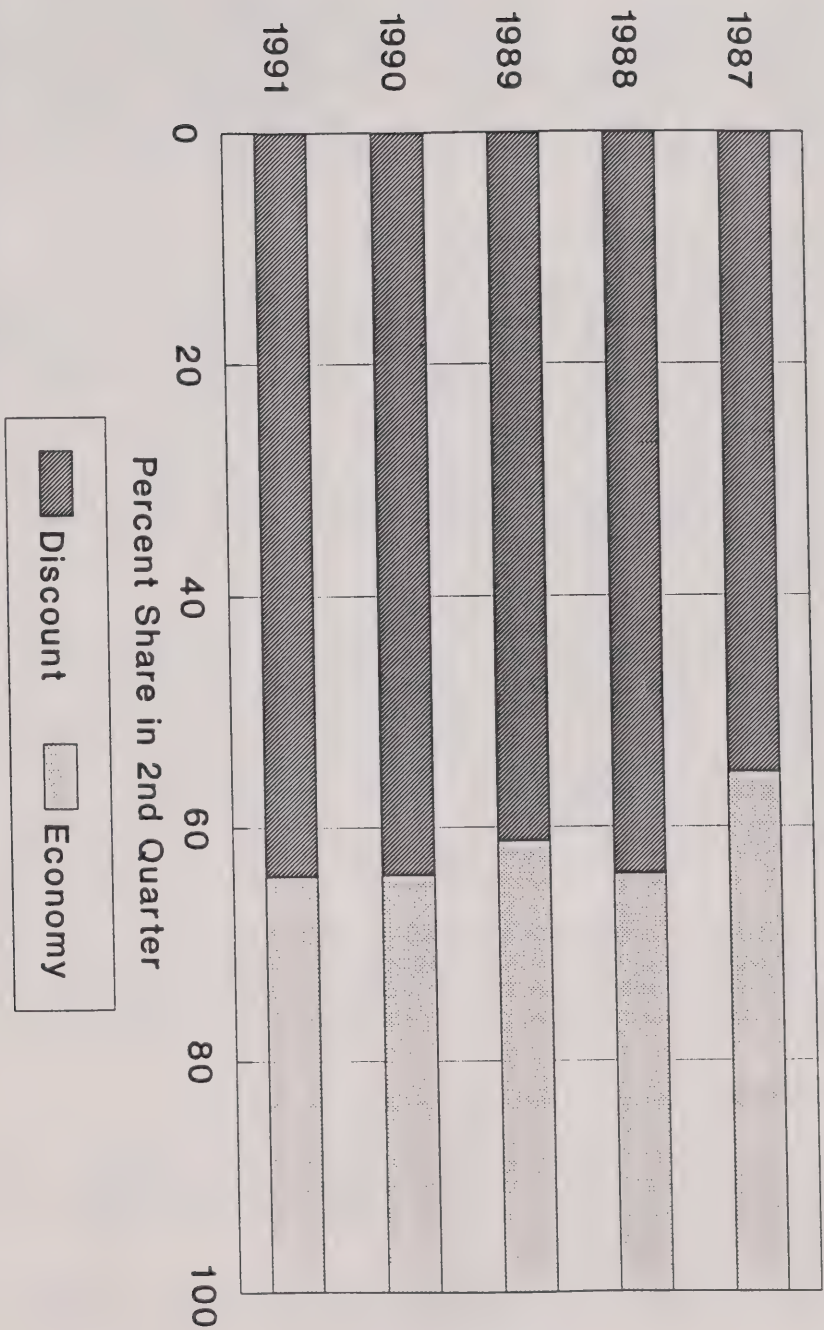
## Average Air Fares for the Top Twenty-Five Canadian Markets



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Agency statistics



# Discount vs. Economy Fare Usage



Comprehensive Review Staff Working Group  
 National Transportation Agency of Canada  
 Source: Agency statistics

passengers carried on flights to, from, or within northern Canada, travelled on discount air fares.

Another measure of the level of airfares is the average revenue carriers earn per passenger kilometre flown; in other words "yield". Figure 15 tracks yield since 1987, in constant dollars, for the two large carriers. Since 1988, this measure has shown stable yield; but yield has decreased since 1987. This demonstrates how competition, which results in the discounting of fares and the recession has affected the industry.

### **Northern and Remote Regulations**

The NTA, 1987 kept some legislative control over northern and remote air services because air services markets are fragile in these regions. This control covers market entry, complaints against unreasonable fares and certain licence restrictions.

In the south the Agency must issue a licence to a "fit" applicant. In the north a fit applicant can also obtain a licence to operate a service but any person or group may object to the proposed licence. The onus of proving that the licence would cause a "significant decrease or instability" in service rests with the objector.

Since 1988, 209 objections to licence applications have been filed and in 2 cases the Agency has denied the licence. Although the Agency surveys, carried out for the Annual Reviews, have not identified any consensus against this "reverse-onus" process, it is considered by many to be ineffective, largely because, in opposing a licence application, the burden of proof is onerous. Consideration should be given to changing this provision or eliminating it entirely. Although the former opinion is inconsistent with the policy thrust of the NTA, 1987, a process that is not seen to be equitable requires modification.

Since 1988, 5 complaints about unreasonable fares have been filed with the Agency. In all cases, the Agency found the fares to be reasonable. Despite their limited use, the Agency surveys have also identified support for retention of this provision.

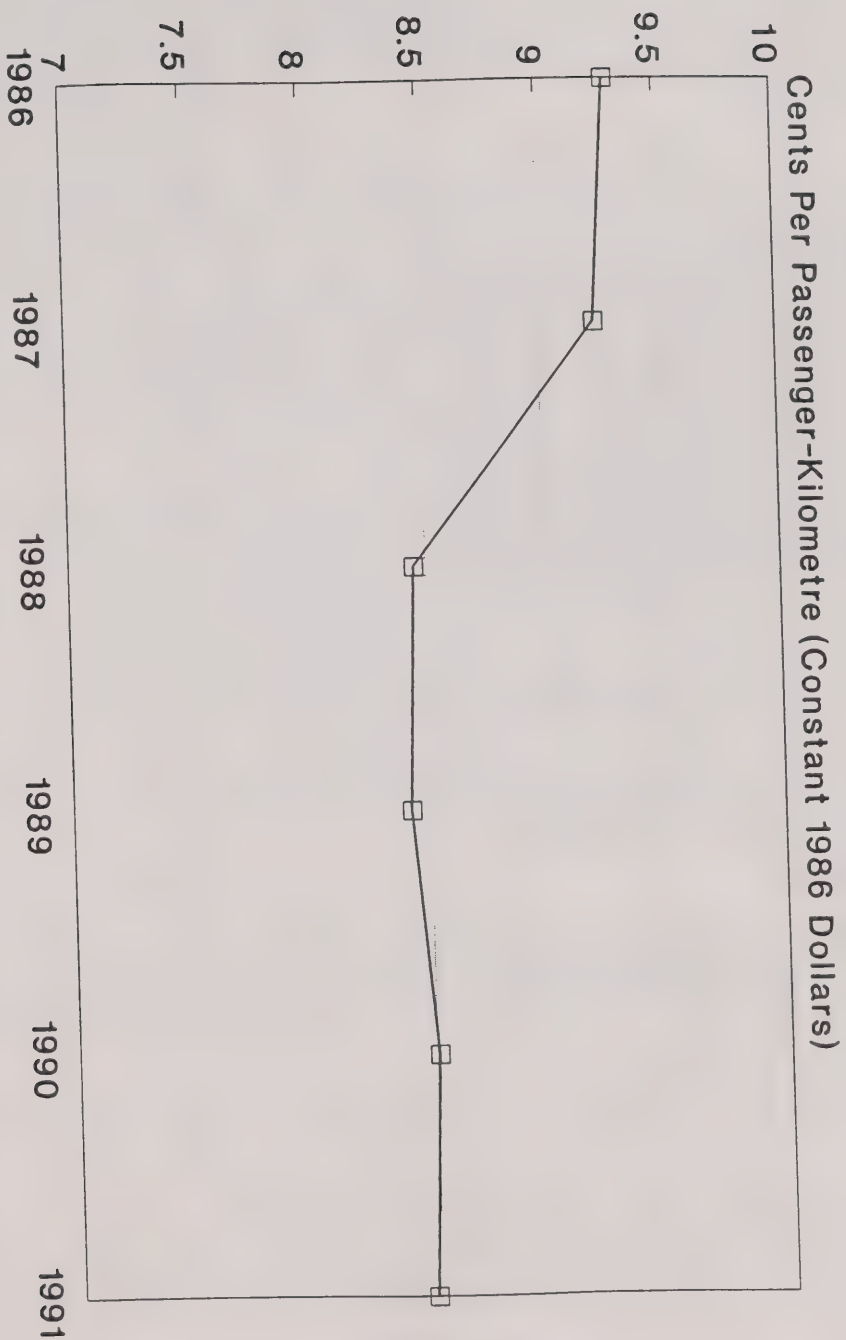
### **The International Climate In Air Services**

Canada's international air relations are largely determined by a web of over fifty bilateral air agreements, that generally restrict competition and the effect of market forces on competitors, routes, capacity and fares.

However, governments, industry and users of air transportation are adapting their attitudes and responses to an increasingly



## Yields: Air Canada and PWA Corp.



Comprehensive Review Staff Working Group  
National Transportation Agency of Canada  
Source: Air Canada and PWA Corp.

globalized and competitive air environment. The United States has, for example, proposed to Canada a very wide open air regime and negotiations on these proposals are now underway. The U.K. and Germany have expressed interest in more liberal agreements on scheduled services and much more liberal agreements on charter services. The European Community as a whole is becoming dramatically more liberal in terms of air competition, at least internally.

At the industry level, carriers are responding, adapting and restructuring to new global realities. Alliances among carriers, often including equity interests, are becoming more prevalent. These may extend the reach of carrier markets and affect carrier abilities to offer worldwide services and a larger range of services to consumers. They also give rise to new marketing strategies such as the use of Computer Reservation Systems(CRS) and shared use of aircraft and crews. These factors are changing the economic framework in which carriers carry on their business and may seriously affect the balance between private and public interests presently established in law.

The Agency currently regulates certain aspects of these new developments, including block space arrangements between carriers and the Canadian status, including control in fact, of Canadian carriers. Many other aspects of this new globalized co-operation between carriers may go unregulated, because such co-operation was not anticipated at the time of the drafting of the Act. Alternatively, it may only be regulated in a partial or ad hoc fashion, for example, Computer Reservation Systems. The issue facing the Review Commission and policy-makers over the next decade is what conceptual economic framework is appropriate for the air industry in this new environment and the legislative and regulatory provisions that should flow from such a framework in both the medium and longer term.

## Summary

Overall, since air regulatory reform began, service has improved markedly to meet demands for traveller convenience. Also, since the NTA, 1987 was introduced, travellers have had more discounts available and air fares have, in constant terms, stayed about the same.



Overcapacity is a problem for major Canadian air carriers. When combined with recession conditions exacerbated by fuel price increases and travel cut-backs associated with the Persian Gulf war, this over-capacity has caused carriers to re-structure and reduce operations. As a result, there have been extensive changes in services, equipment and marketing. Regional carriers have grown in importance and have increased frequencies to smaller centres, offering greater choice and convenience for passengers connecting with major carriers.

#### ACCESSIBLE TRANSPORTATION SERVICES FOR PERSONS WITH DISABILITIES

Section 3 of the NTA, 1987 states that each carrier or mode of transportation is to provide service in a manner that does not constitute an undue obstacle to the mobility of persons, including persons with disabilities. Sections 63.1 to 63.4 of the NTA, 1987 set out the Agency's authority with respect to the transportation of persons with disabilities. This includes the authority to inquire into whether the way in which a service is being conducted creates an undue obstacle and to make regulations to eliminate undue obstacles in the transportation network governed by the Act.

The Agency has been active in developing regulations, handling complaints and has conducted inquiries.

Proposed amendments to the NTA, 1987, will make meeting the needs of travellers with disabilities part of national transportation policy.

The Agency is currently working on a number of regulatory initiatives that deal with terms and conditions of carriage of persons with disabilities, training standards for transportation personnel, communication of information and accessibility of equipment and terminal facilities.

Proposed regulations concerning training of personnel and terms and conditions for carriers operating large aircraft were published in the Canada Gazette in March 1992 for public comment.

The Agency has dealt with over 50 formal complaint applications, most of which relate to the air mode and to persons with mobility impairments. In 12 of these cases, the Agency identified an undue obstacle and ordered corrective action.

Several Agency inquiries, to determine if there is an undue obstacle to the mobility of persons with disabilities, are underway. These include inquiries into the level of accessibility of motor coach, air and ferry services, as well as of ground services at airports.

In response to the Second Report of the Standing Committee on Human Rights and Disabled Persons, a review of relevant federal legislation has been undertaken. An omnibus bill to amend several Acts was tabled in May, 1992. The bill proposes that Section 3 the NTA, 1987 be amended as follows:

"... a safe, economic, efficient, and adequate network of viable and effective transportation services **accessible to persons with disabilities** ... is essential to serve the transportation needs of shippers and travellers, including **persons with disabilities** ..."

The Agency supports this revision which will make meeting needs of travellers with disabilities an integral part of the national transportation policy.

### CONTINENTAL ACCESS

The previous sections have dealt with the Agency's experience under four years of the NTA, 1987. This section deals with the major emerging trend, the development of continental transportation networks involving the integration of all modes.

World trade has doubled in the past seven years and will likely continue this pace of growth. Competition is increasing, however, and more competition is a double-edged sword for Canada. On the one hand, lower tariffs and better market access make it easier to export goods; on the other, they make things easier for foreign competitors. In an era of globalization of markets, Canada and the U.S. are essentially considered as a single market. For Canadian ports and railways, the transborder movement of containerized cargo and the resulting competition with U.S. ports for this business constitutes a challenge.

Open and more competitive world markets make lower transportation and communication costs a key to competing successfully. Canadian shippers need faster delivery and lower costs through better routing and use of modes.

To meet these competitive challenges, traditional transportation patterns are changing as Canadian shippers and carriers integrate into a North American transportation network. A goal of the NTA, 1987 is to increase carrier competition in meeting the needs of shippers and travellers by opening up transportation markets.

The increasing use of continental rail networks by Canadian shippers is a reflection of their need to use the most effective rail route for their traffic irrespective of national borders, ports or carriers that have traditionally played a major role in their transportation decisions.



Commodities exported from Canada are, to a large degree, resource products and must travel long distances from the inland location of Canadian mines, plants and mills to the U.S. and export positions at coastal ports. Inland rail rates and services provided by railways can directly affect the ability of shippers to compete in world markets.

Shippers are seeking access to new competitive services in a variety of forms: the use of a different mode of transport, the use of a new intermodal routing, and new routings within a mode, often with a different carrier. Some shippers have considered using routings that access U.S. ports which offer competitive options for exporting their products. U.S. railroads such as Burlington Northern provide western Canada shippers with competitive options on the movement of products to the important U.S. market. Reload centres developed for the forest industry and inland ports such as one recently developed at Shelby, Montana, also provide Canadian shippers with increased access to continental transportation networks.

Canadian producers and consumers who ship and receive their traffic in containers appear to place particular importance on access to continental rail networks. A significant portion of the containerized cargo originating in or destined to Canada is routed over the lines of U.S. railroads and through U.S. ports. Similarly, Canadian ports receive substantial U.S. container traffic. The railways have recently restructured their North American rail operations. In addition, fast intermodal trains, new intermodal terminals and double-stack services have been developed and instituted.

The competitiveness of the Canadian transportation system and its parts can be measured by two standards: 1) how well it can compete on price; and 2) how well it can compete on service.

Shippers have reported that the NTA, 1987 has increased price competition for transportation in Canada. Available information suggests that, since 1988, truckers have competed fiercely on price. Intermodal services, which must compete with all-rail or all-truck routings, have also been more price-responsive to competition. Air and marine services have also responded to downward rate pressure.

In general, service quality is also reported to have improved with implementation of the NTA, 1987. Survey results for rail and trucking show that service has improved from year to year.

The NTA, 1987 has helped to accomplish these results. Future policies must ensure shippers access to competitive continental transportation networks that integrate all modes.

## SUGGESTED AMENDMENTS TO THE ACT

The Agency has reviewed the various sections of the NTA, 1987 to determine whether, in light of experience in their implementation, changes in the law would assist in accomplishing the policy set out in section three of the Act. As a result, changes are suggested in a number of specific sections. These suggestions are made explicitly in light of the current policy: The Agency is charged with implementing provisions for carrying out the policy set by Parliament, not with setting that policy. The intention here is only to refine the means for implementing the given policy.

Attachments to this submission detail sections where changes are recommended. More detailed explanatory notes concerning some of these recommendations are included; briefing notes containing more complete reasoning behind each individual suggestion have been developed and will be provided to the Commission on request.

In summary, the Agency recommends one change to the overall application of the Act: that Computer Reservation Systems and similar transportation-related Electronic Data Interchange systems be brought under the Act. Because of their importance to air transportation competition, their regulation is important for implementing a policy of intra-modal competition.

Other suggested amendments tend to affect regulatory rather than transportation operations. These amendments are largely aimed at clarifying Agency powers and duties. Authority for obtaining information where continuing duties are at issue is a particular concern. More flexibility in dealing with technical offenses is also a concern.

Some amendments respond to for real industry developments, such as the recommendation that the Act apply to Computer Reservation Systems. Recommendations are made to provide consumers of air transportation services in southern Canada with refund protection, and to adapt air licensing conditions to meet new industry practices arising from global competition and cooperation. "Wet leasing", "evidence of insurability" and the definitions of "Canadian", and "Canadian owned" are of concern.

For similar reasons, the Agency recommends that interswitching be extended to rail carriers with running rights over tracks of local carriers, that net salvage value for the sale of branch lines be clarified, and that environmental protection become a consideration in abandonments.

Details of these and other amendments that could affect the result of particular cases are given in Attachment I. A number of suggested amendments of a "housekeeping" type, (spelling, grammar, English/French correspondence, and the like) are given in Attachment II.

**ATTACHMENT 1**

**SUGGESTED STATUTORY CHANGES  
(SUBSTANTIVE)**



## SUGGESTED STATUTORY CHANGES (SUBSTANTIVE)

The following changes are recommended for the better implementation of the current policy. These changes would modify the scope of Agency operations to adapt to experience and changing circumstances through modifying definitions, interpretations and applications of regulations. While these are not, strictly speaking, policy measures, they are considered by the Agency to be substantive as these changes could affect the outcome of cases in the future. Fuller descriptions of some of these recommended amendments are provided in briefing notes where indicated (\*). Agency staff have prepared briefing notes on all these matters and will provide appropriate notes and additional information on request.

<u>PART</u>	<u>SEC'N</u>	<u>DESCRIPTION</u>
<b>PREFACE</b>		
Application	2.(2)	<b>Application generally:</b> to include Computer Reservation Systems (CRSs) *
Interpretation	4.	<b>Interpretation:</b> amend definition of "goods" to read "freight, rolling stock and mail".
<b>I.: AGENCY</b>		
Establishment and Operation	8.	<b>Temporary members:</b> Provide for appointment of members for a single case (not a temporary term) where particular expertise is needed.
	20(5)	<b>Hearings:</b> allow for taking evidence in foreign parts
Rules, Orders and Regulations	27	<b>Rules orders and regulations generally:</b> provide for greater informality through a procedural guidance section which requires that a) proceedings be informal and expeditious; b) considerations of fairness in the circumstances should be over-riding; and c) the Agency is not bound to adhere strictly to the rules of evidence.
	30	<b>Fees:</b> Let the Agency set fees to recover costs for permits, insurance filing, international tariffs, etc. without GIC approval.

Inquiries	32	-	<b>General Inquiries by Agency:</b> Need for Agency action on own volition in certain cases *
	35		
	32		<b>Inquiries into complaints:</b> provide for staff to investigate and enforce the <u>NTA, 1987</u> and related regulations (especially about on-going obligations, as for licenses) without having a particular matter before the Agency.
	33		<b>Powers on inquiries:</b> An appointee under section 33 should be able to enter and inspect premises and copy/seize documents found thereon that are necessary for the purposes of the inquiry. *
Powers of Agency	35		<b>Inquiry into complaint:</b> Let the Agency determine whether an air carrier qualifies as "Canadian" without receiving a particular application (e.g. when asked for an advance ruling) *
	35(4)		<b>Mandatory and restraining powers:</b> The powers given should be subject-specific (as in Section 70) and the English text should be brought into line with the French to clarify the limits on Agency power intended by Parliament.
	40		<b>Orders:</b> The abandonment provisions of the Act should allow the Agency to require railways to restore or alter the lands, as nearly as possible, to their former state or consistent with surrounding land use before an abandonment, and to apportion costs between the railway and interested parties.*
	41		<b>Review etc. of decisions and orders:</b> need for amending powers for minor changes in orders without full review of dec'n. [see also 172]
	45		<b>Apportionment of rate:</b> Clarify that the Agency may make its own determination <u>as well as</u> requiring a carrier to declare the proportions of intermodal rates applied to each mode of transportation.
Mediation and Arbitration	46		<b>Reference to mediation:</b> Where all parties agree, provide for mediation of any dispute within the Agency's jurisdiction.

	47	<b>Application of sections 48 to 57:</b> eliminate the restrictions on application of the arbitration proceedings to intermodal traffic
Investigations	62(4)	<b>Time limit for decision:</b> To permit all parties to present their cases and still be expeditious in public hearings, provide that a decision must issue within 30 days of completion of such hearings and notice of such hearings must issue within 90 days of receipt of the application.
Transportation D i s a b l e d Persons	63.1(1)	<b>Regulations [GIC approval]:</b> Clarify that access provisions apply to all aspects of services under federal jurisdiction, including interconnections (e.g. to services at airports as well as to transport by air) *
Review and Appeal	65(4)	<b>Agency may be heard:</b> provide the Agency with a right to be heard in any Court which has proceedings before it that involve the Agency. *
Annual Report	66	<b>To Governor in Council:</b> revoke as redundant in view of the annual tabling of Part III estimates by the Treasury Board
<b>II.:</b> <b>A        I        R</b> <b>TRANSPORTATION</b>		
Interpretation	67	<b>Definitions:</b> * let Agency determine on own motion the issue of whether Canadian control in fact exists [see s.35] * define "publicly available" * define "CRS" and associated terms * amend definitions of international licenses to accord with new practices (e.g. code-sharing) [see note s.87]
General	68(2)	<b>Specialty service exclusion:</b> provide that all specialty services be included among those now provided for in section 3 of the Air Transportation Regulations, so that all exclusions can be found in one document.
D o m e s t i c Service	71	<b>Prohibition re operation:</b> Forbid unauthorized "wet leasing" (i.e. lease of



both crew and aircraft) to maintain Canadian control over air services.

- 72 (1) (c) **Issue of licence:** Modify the provision so that carriers must have insurance coverage, rather than simply provide "evidence of ... insurability" (also S.72(2)(1)(iii), 88(c), and 94(1)(c))
- 72(4) & (5) **Terms and conditions of certain domestic licences:** Insure the provision of information so that the Agency can monitor compliance with ongoing responsibilities to hold adequate insurance and give notice of discontinuing service, and for follow up of compliants.
- 73 **Qualification exemption:** Let the Minister give a temporary exemption for international as well as domestic service so that licensees (e.g. lodge operators) who acquire services, but for which they do not meet "Canadian" ownership criteria, may continue to operate them for a limited time.
- 74 **Licence not transferable:** allow the non-arm's length or associated party transfer of licenses in certain limited circumstances, for instance where the transfer results from a re-organization.
- 75 **Suspension or cancellation of licence:** Let the Agency cancel licences where service has not been provided in twelve months to clarify how many carriers are actually active in markets.
- Domestic Service Fares, Rates and Charges 83(2) **No fares, etc. unless set out in tariff:** Amend to provide that carriers must include and abide by terms and conditions of carriage in their tariffs (e.g. for baggage liability, denied boarding compensation, refunds and other consumer protection matters).
- International Service N E W  
[ A d d  
a f t e r  
s.86] **Participation in International Regulatory Organizations:** provide explicitly for Agency participation in the work of international organizations such as ICAO which participate in international air service regulation.

Scheduled International Service	87	<b>Prohibition re operation:</b> amend to ensure authority to regulate "wet leasing" * [see also s. 93]
	88(c)	<b>Issue of licence [liability insurance]:</b> distinguish insurability for licencing from real insurance for flying & drop need for "evidence of insurability" [see also s.72(1)]
	89(1)	<b>Eligibility to hold scheduled international licence:</b> Provide that the "Canadian" status of an operator be demonstrated to the Agency prior to a Ministerial decision on designation of international air carriers.
	90	<b>Licence not transferable:</b> let transfer in non-arm's length deals (e.g.re-organizations) [see s.74]
Non-scheduled International Service	93	<b>Prohibition re operation:</b> amend to ensure authority to regulate "wet leasing" [see note s.87]
	94(1)	<b>Issue of licence:</b> Drop public interest test for small aircraft operated by Canadian carriers * and the need for "evidence of insurability" [see s.72(1)]
	95	<b>Licence not transferable:</b> OK in non-arm's-length deals [see s.74]
Information Requirements	99	<b>Disclosure of information required:</b> let Agency require information for matters under its jurisdiction at need, not just when complaint received. (see also note s.33 re entry)
	100	<b>Notification of agent required:</b> amend so U.S. carriers won't need agents.
Regulations	102(1)s ubs	<b>Regulations [regulated terms included in contracts with tour operators]:</b> * (d) amend to include all domestic charters to protect advance payments on Southern Canada charters * (i) expand to cover EDI operations like CRSs
	102(3)	<b>Regulations and orders:</b> revoke: redundant in view of s.28

Enforcement	103(1)	<b>Offences:</b> make intentional non-licencing offences subject to hybrid of indictment and summary process *
Enforcement	107	<b>Designation of provisions:</b> a more definitive level of review for fines should be provided.

### III.:

#### R A I L TRANSPORTATION

#### Division I: Rail Freight

Interpretation	110	<b>Definitions:</b> * provide in "interchange" for interswitching rights to and between carriers operating on the same line of railway [also affects s.152]
Rates	113(5)	<b>Disallowance of non-compensatory rate [on inquiry]:</b> A determination that a rate is compensatory or not should be made in 90 days and its effect on competition should be determined within 30 days thereafter.
Confidential Contracts	120	<b>Confidential Contracts:</b> provide explicitly for electronic filing of contracts according to current EDI practices
Interswitching	152	<b>Interswitching of traffic between connecting lines:</b> Changes in interswitching would be required if changes to section 110 definitions of "interchange" are made.
Limiting Carriers' Liability	153(1)	<b>Contracts limiting liability:</b> Amend to include EDI agreements

#### Division II: Railway Lines

Interpretation	157	<b>Actual loss:</b> define traffic as "freight traffic" only (and not passenger traffic) for abandonment purposes [affects sections 157(2)(a), (b) and 157(3)d]
	157 (4)	<b>Determination of whether subject to abandonment control:</b> Clarify track



classification and accord between English and French texts (also affects s.159)

Conveyance of  
Railway Lines  
W i t h o u t  
Abandonment

158

**Conveyance to other company deemed not abandonment:** CN should be assured of being on the same footing with other railways, notwithstanding S.23(9) of the CNR Act and this provision should be explicit on the point (also affects s.174)

158(3)

**Agency's functions:** Let the parties agree with the Agency on a date for conveyance later than the Statutory one when circumstances warrant (also affects s.174)

Applications  
for Abandonment  
of Operations  
of Railway  
Lines

163

**Report on actual loss where opposition:** Allow the Agency to make an interim determination of actual loss followed by a final, perhaps revised, determination after hearing evidence of interested parties.

164

**Determination whether line economic or uneconomic:** Provide for the Agency to consider environmental impacts in its consideration of whether to order a line abandoned. (also affects s.162, 165, 166) [see also s. 40]

165

**Abandonment:**

\* Enable the Agency to set out conditions in abandonment orders on the carrying out of measures to restore the lands to their former state, or to deal with environmental issues and damage arising from abandonments [see s.164]

\* Allow the Agency to extend the statutory deadline for rendering its decision to consider an application by a short-line railway to acquire and operate the line (see S.174 and 158(3))

166

**Public interest:** extend deadline if short-line application [see s. 158(3) and s.174]

168

**Date of abandonment:** For better planning, require VIA to formally decline to purchase such a line within 6 months of the abandon order.

169

**Disposition of application:** extend deadline if short-line application [see s.158(3) and s.174]

- 170(1) (b) **Powers of Agency on application:** let Agency require added information such as abandonment plans and operating information from other railways in area of the application where these could impact on the future of the line.
- 171 **Reconsideration of application:** Specify that reconsideration must occur every three years from the date of the previous Agency decision, not from the date of the original application.
- 172 **Rescission of order/Variation of order:** It should be explicitly noted that S.41 does not apply in this section.
- 172(2) (b) **Variation of order:** let the Agency advance the effective date fixed in abandonment orders where circumstances warrant, not just fix a later date.
- 173(3) **Recommendations to Minister:** Provide that the Agency may also recommend assistance under section 175 be offered where lines are to be abandoned
- 174 **Offer to purchase: \***  
 \* Define "net salvage value" or delete references to it, for clearer offers  
 \* two deadlines needed for two stages: start decision clock from date of offer, not application. [also see s. 158(3)]  
 \* Clarify accord with CNR Act [see s.158]
- Subsidies for Operation of Branch Lines 178(2) **Claim for payment:** A distinction between words "operated" and "maintained open" should be made for subsidy purposes and the losses on the latter lines should be those limited as determined by the Agency.
- 178 & 179 **Definition of claim period; Adjustment:** Allow claims to be paid by group and allow adjustments to be made on subsidy payments on the same branchline or any other branch line.
- Division III:  
Enforcement
- Offences 182 **Offences:** Provide for indictment, not just

summary conviction for serious offenses [see  
note s.103(1)]

IV.:  
MOTOR VEHICLE  
TRANSPORT

NONE

V.  
NORTHERN MARINE  
R E S U P P L Y  
SERVICES

Tariffs	218(2)	Publication of tariffs: modify posting requirements *
	218(3)	Charges prohibited: tariffs to include terms and conditions

VI.:  
C O M M O D I T Y  
PIPELINES

NONE

VII.:  
ACQUISITIONS OF  
C A N A D I A N  
TRANSPORTATION  
UNDERTAKINGS

Proposed Acquisitions	252	Notice of proposed acquisition: to ensure decisions relevant to current circumstances, require notice to be given anew if the proposal is not implemented within 18 months.
	253(3)	Voting share holding must be 10% or more: Specify that 10% of <u>votes</u> of shares is the consideration where different shares have different voting rights.
	256	Review if objection: Specify that the review may stop if the objection is withdrawn
	257	Decision of Agency: The statutory deadline should begin from the date when an objection is received.
Demands for Information	259(1)	Agency may require information: Provide that the Agency may also require information where it needs it to determine its jurisdiction over an application



Remedies 262

**Demand [et seq]:** Provide that the Agency may also make these demands where it has reasonable grounds to believe that an acquisition is about to take place in contravention of the Act.

**VIII.:  
GENERAL AND  
TRANSITIONAL  
PROVISIONS AND  
RELATED AND  
CONSEQUENTIAL  
AMENDMENTS**

Division I:  
General and  
Transitional

Annual Reviews 267

**For certain years:** Provide for continuation of the annual reviews \*

Information Requirements 268(6)

**Provision of certain information to the Minister:** These provisions should explicitly over-ride those in the Railway Act.

**ATTACHMENT 2**

**SUGGESTED "HOUSEKEEPING" CHANGES  
TO THE NTA, 1987**

SUGGESTED "HOUSEKEEPING" CHANGES TO THE NTA, 1987

The following transitional provisions are no longer required and therefore should be repealed: 109(1)-(3), 160(7), 171(6), 185(1), 186(2), 198, 200(2), and 272(9). In addition, the following "housekeeping" changes are recommended.

SEC'N

DESCRIPTION

- |           |   |
|-----------|---|
| 1         | <b>Short title</b> Delete the date from the citation  |
| 18(2)     | <b>Judicial Notice: Evidence of deposited documents:</b> The English "time" of deposit should be changed to "date" to correspond with the French.   |
| 25        | <b>Referral to committee:</b> insert "visées à l'article 24" before "devant" in the French version to correspond with the English   |
| 26        | <b>Consultation required:</b> insert "visées à l'article 24" before "devant" in the French version to correspond with the English   |
| 37        | <b>Effect of findings etc. re facts:</b> correct the spelling of "jurisdiction"   |
| 38(3)     | <b>[...receiver...] Documents issued by company:</b> this paragraph should become a separate provision as it is not logically connected to 38(1)/(2)  |
| 67        | <b>Definitions:</b> Correct the poor French translation ("actions") of the English "voting interests".  |
| 70(1)     | <b>Exemption from requirements [where agency has qualified opinion]:</b> Delete the terms "order" (English) and "directive" (French) as they are not necessary in context and imply different meanings.   |
| 70(2)     | <b>Exemption not to provide certain relief:</b> the English requirement for insurance "coverage" should be changed to insurance "policy" to correspond with the more exact French [similarly in 71(2)(c), 72(1), 72(2)(a), 94(1)(c) & 88]                       |
| 157(2)    | <b>Actual loss:</b> The French definitions of costs should be brought into better correspondence with the English.  |
| 157(4)(a) | <b>Distinct classification of trackage by the Agency</b> would be clarified by making the French accord with a modified English text, viz.: "The Agency may determine as a question of fact whether a line of railway in Canada is<br><br>(a) (i) a yard track; |



- (ii) a siding;
  - (iii) a spur that is not a branch line; or
  - (iv) other trackage auxiliary to a line of railway; or
- (b) another kind of line,

even though no application has been made for the abandonment of the operation of the line."

159(2) **Non-application [of prohibition to spurs etc.]:** to correspond to the recommended changes in s. 157(4)(a), the text should be amended to: "Subsection (1) does not apply in respect of (i) a yard track; (ii) a siding; (iii) a spur that is not a branch line; or, (iv) other trackage auxiliary to a line of railway."

267(3) **Report:** The date in French should be corrected to "le 31 mai" if the annual reviews are continued.





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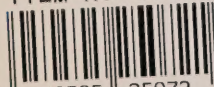
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